STATE OF NORTH DAKOTA

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF:	)	
	)	**AFFIDAVIT OF SERVICE**
Application for Surface Drain No. 5254	)	**BY REGULAR MAIL**
Nelson County Highway 22 Drain	)	

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Patrice Power, states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

2. I am of legal age and on December 28, 2021, I served the NOTICE OF DECISION ON SURFACE DRAIN PERMIT NO. 5254 by placing a copy in first–class, regular mail, as shown to the parties of record in the attached APPENDIX A.

Patrice Power

Subscribed and sworn to before me this 28th day of December 2021.

PATRICE POWER
Notary Public
State of North Dakota
My Commission Expires May 28, 2024

Notary Public

NOTICE OF DECISION

ON APPLICATION TO DRAIN NO. 5254
NELSON COUNTY ROAD 22 DRAIN PROJECT

TAKE NOTICE that Application to Drain No. 5254, submitted by the Nelson County Commission for the Nelson County Road 22 Drain, was conditionally approved by the State Engineer on December 21, 2021. The project consists of construction of approximately 11,000 linear feet of drain including 6,000 linear feet of 18-inch diameter pipe to lower the surface water around Nelson County Road 22 by approximately 1-foot. The project will discharge into a likely watercourse that drains into Stump Lake located in Northeast 1/4 of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County.

The State Engineer's decision may be viewed at the Department of Water Resources (DWR), 900 East Boulevard Ave., Bismarck, ND 58505 or on the DWR's website at www.dwr.nd.gov. A copy may also be requested by writing to the above address or by emailing dwrregpermits@nd.gov.

A hearing may be requested within thirty days of the date of service of the State Engineer's decision. A valid request for a hearing must be received in writing by January 27, 2022; must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the State Engineer's decision; and must state what material facts or conclusions are believed to be erroneous and why they are believed to be erroneous (North Dakota Administrative Code § 89-02-01-09.6).

Dated December 28, 2021.

John Paczkowski, P.E.
North Dakota State Engineer

APPENDIX A – PARTIES OF RECORD

Ben Varnson, Chairman
Nelson County Water
Resource District
P.O. Box 446
Lakota, ND 58344-0446

Charlene Varnson, Secretary
Nelson County Water
Resource District
P.O. Box 446
Lakota, ND 58344-0446

Devils Lake Joint
Water Resource District
524 4th Avenue, #27
Devils Lake, ND 58301

Ramsey County
Water Resource District
524 4th Avenue NE Suite 12
Devils Lake, ND 58301

Kenneth Reis
Eddy County
Water Resource District
1380 68th Avenue NE
New Rockford, ND 58356

Lucia Jacobsen, Secretary
Benson County
Water Resource District
P.O. Box 347
Minnewaukan, ND 58351-0347

Nelson County Commission
C/O Nancy Marquart
210 B Avenue W, Ste 301
Lakota, ND 58344

Nelson County Auditor
210 B Avenue W, Ste 301
Lakota, ND 58344

Benson County Auditor
P.O. Box 206
Minnewaukan, ND 58351

Eddy County Auditor
524 Central Ave
New Rockford, ND 58356

Ramsey County Auditor
524 4th Avenue NE, Unit 6
Devils Lake, ND 58301

Nelson County Highway Department
P.O. Box 407
McVille, ND 58254-0407

Bill Franzen
Supervisor of Williams Township
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Lakota, ND 58344

Orin Slettebak
Supervisor of Williams Township
11349 37th Street NE
Michigan, ND 58259

Lloyd Hoffarth
Supervisor of Dodds Township
4184 103rd Avenue NE
Lakota, ND 58344

Ray Schuh
Supervisor of Dodds Township
10539 38th Street NE
Lakota, ND 58344

Ted Rohde
Supervisor of Central Township
11291 32nd Street NE
Michigan, ND 58259

Jason Severson
Supervisor of Central Township
3477 119th Avenue NE
Lakota, ND 58344

Jerome Ensrud
Supervisor of Wamduska Township
3009 104th Avenue NE
Pekin, ND 58361

Scott Ferry
Supervisor of Wamduska Township
3502 Hwy. 1
Lakota, ND 58344

U.S. Army Corps of Engineers
Regulatory Office
3319 University Drive
Bismarck, ND 58504

Jennifer Vetter
NRCS – State Office
220 East Rosser Avenue
PO Box 1458
Bismarck, ND 58502-1458

Christi Fisher
NRCS – State Office
220 East Rosser Avenue
PO Box 1458
Bismarck, ND 58502-1458

Dustin J. Brodina
NRCS – District Office
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Devils Lake, ND 58301

North Dakota Department of Health
600 East Boulevard Avenue
Bismarck, ND 58505-0200

Peter Wax
North Dakota Department of
Environmental Quality
4201 Normandy Street
Bismarck, ND 58503-1324

Bruce Kreft
North Dakota Game and Fish Dept.
100 North Bismarck Expressway
Bismarck, ND 58501-5095

NDDOT
608 East Boulevard Avenue
Bismarck, ND 58505-0700

Andrea Travnicek
Director, North Dakota Department of
Water Resources
900 East Boulevard Avenue
Bismarck, ND 58505

John Paczkowski
North Dakota State Engineer
900 East Boulevard Avenue
Bismarck, ND 58505

APPENDIX A – PARTIES OF RECORD

Aaron Carranza
North Dakota Department of
Water Resources
900 East Boulevard Avenue
Bismarck, ND 58505

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North Dakota Department of
Water Resources
900 East Boulevard Avenue
Bismarck, ND 58505-0850

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Have Only Positive Expectations, LLLP
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P.O. Box 1086
Vancouver, WA 98666-1086

Vicki Cookman
1365 Arrowwood Drive
Brea, CA 92821

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December 28, 2021

Ms. Nancy Marquart, Chairman
Nelson County Commission
210 B Avenue W, Ste 301
Lakota, ND 58344

Mr. Ben Varnson, Chairman
Nelson County Water Resource District
P.O. Box 446
Lakota, ND 58344-0446

RE: Surface Drain Permit Application No. 5254

Dear Ms. Marquart, Mr. Varnson:

The Department of Water Resources[1] (DWR) has reviewed Surface Drain No. 5254 (Application), submitted by the Nelson County Commission for a proposed surface drain. The surface drain is located within the West 1/2 of Section 16, North 1/2 of Section 20, and the NE 1/4 of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County.

The DWR has conditionally approved Surface Drain Permit No. 5254 (see Notice of Decision including permit, permit conditions, and interoffice memo enclosed).

Given the volume of records regarding this Application, the permit record, including the DWR's interoffice memo exhibits, has been made available on the DWR website's homepage: dwr.nd.gov.

Please contact me at 701-328-3442 or joemorrissette@nd.gov if you have any questions concerning this correspondence.

Sincerely,

Joe Morrissette

Joe Morrissette
Water Resource Engineer

JM/1131

Enclosures

Cc: Parties of Record

[1] The North Dakota Office of the State Engineer, as a codified regulatory entity, was repealed and replaced with the Department of Water Resources on August 1, 2021, via House Bill 1353 of the 67th Legislative Assembly.

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Document Routing
12/20/21 : joemorrissette
12/21/21 : mlindsay
12/21/21 : acarranza
12/21/21 : jpaczkowski
12/21/21 : atravnicek

TECHNICAL MEMORANDUM

DATE: **December 17, 2021**

TO: Andrea Travnicek, Ph.D. Director
John Paczkowski, P.E., State Engineer

FROM: Aaron Carranza, P.E., Regulatory Division Director
Matt Lindsay, P.E., Engineering and Permitting Section Manager
Joe Morrissette, Water Resource Engineer

SUBJECT: **Application for Surface Drain No. 5254 – County Road 22 Drain**

The Department of Water Resources (DWR) received the following surface drain application:

Application Number: 5254
Application Received Date: December 10, 2018
Applicant: Nelson County Commission
Project Location: W 1/2 of Section 16, NE 1/4 of Section 19, N 1/2 of Section 20, Township 152 North, Range 59 West, Williams Township, Nelson County
New Drain Construction or Modification to Existing Drain: Modification to Existing Drain
Purpose of Drainage: Flood Relief, Protect Structural Integrity of Nelson County Road 22
Feature to be Drained: Pond, Slough, Lake, or Any Series Thereof, Road Right-of-Way of Nelson County Road 22

PROJECT BACKGROUND

The Application was submitted by the Nelson County Commission for a drain project intended to alleviate flooding effects to Nelson County Road 22. Specifically, the project proposes modification to the existing drain by rerouting the natural outlet to the sloughs along Nelson County Road 22 within Sections 16, 17, 19, 20, and 21 of Williams Township. The length of the proposed drain is 11,000 linear feet with a proposed maximum cut of 5.5 feet, side slopes of 4:1, and a 3-foot bottom width. The proposed drain will include two sections of 18-inch pipe totaling 6,000 linear feet. It has been determined that the last section of 18-inch pipe will have an inlet elevation of 1515.20 feet (NAVD 88), which is based on a May 2020 KLJ survey of the natural outlet of the slough (see DWR Exhibit 1). The project will discharge into what appears to be a natural watercourse that is part of the Stump Lake Basin. The project was necessitated by the Applicant's inability to gain property access to maintain the natural outlet location of the sloughs, which is located in approximately in the center of the SE ¼ of Section 17 (Williams Township).

To date, the Application review has included the following:

1. On December 10, 2018, the Applicant submitted Surface Drain Application No. 5254 to the DWR.
2. Upon review, the DWR issued a determination on September 6, 2019, that the proposed project under the Application is drainage of statewide or interdistrict significance. The Application was forwarded to the Nelson County Water Resource District (District) for processing.
3. On November 19, 2019 the District held a public hearing regarding the Application.
4. On December 19, 2019, the District issued their "Order Approving Application No. 5254 – County Road 22 Drain". The Application was subsequently sent back to the DWR for review and approval.

These review components will be discussed in further detail below.

DWR Statewide or Interdistrict Significance Review
The Application proposes a solution to relieve flooding and save the structural integrity of Nelson County Road 22. The project will discharge into a natural watercourse that is part of the Stump Lake Basin, which is a watershed within the Devils Lake Basin.

According to North Dakota Century Code (N.D.C.C) § 61-32-03, a permit to drain is required "draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising of eighty acres or more". Upon review of the Application, the DWR determined that the proposed Application would drain a watershed area exceeding 80 acres or more. Therefore, it was determined that the Application would require a permit. According to a July 25, 1995, letter from the State Engineer, "all drainage applications received for projects within the Devils Lake Basin will be, until further notice, of statewide significance". This was later adopted in 2020 into the DWR Policy No. REG-2020-3 section 3.1.1.7.1. Therefore, the Application was determined to drainage of statewide or interdistrict significance.

On September 6, 2019, the DWR issued their determination, determining the proposed drainage is drainage of statewide or interdistrict significance. In the DWR's determination, the DWR stressed that it will not issue a permit if the District's or DWR's evaluation of the Application and project yields 1) additional watershed area contributing to Devils or Stump Lakes, and 2) additional water being drained below the natural outlet of the slough complex. The Application was then sent to the District for continued processing.

District Held Hearing
In accordance with N.D.A.C. § 89-02-01-09.1, the District held a hearing regarding the Application on November 19, 2019, at the Nelson County Courthouse in Lakota, North Dakota.

Brain Mager of the DWR was present at the meeting along with representatives from the Applicant, the District, Nelson County Highway Department, U.S Fish and Wildlife Service, Williams Township, Wamduska Township, and numerous area landowners and residents.

Oral testimony was given showing many of the attendants were in support of the project. Some minor concerns were also given in testimony, including whether the project will have adverse effects downstream and upstream of the project and what standards are being met for the side slopes of the ditch channels being constructed as part of the project.

The only written testimony was given from Peter Wax at the Department of Environmental Quality (DEQ). In Mr. Wax's testimony he states that "the drain must not cause an exceedance of the numeric water quality standard or violate the antidegradation policy as outlined in N.D.A.C § 33.1-16-02.1 (water quality standards)".

District's Decision
Following the hearing and on December 19, 2019, the District issued their "Order Approving Application No. 5254 – County Road 22 Drain" (Order) and forwarded the Application to the DWR for consideration. In its Order, the District included one condition to the approved Application. The condition is as follows:

> *Application is APPROVED ON THE CONDITION that the requirements, if any, of the U.S. Corps of Engineers, the OSE, the North Dakota Department of Environmental Quality (each of who presented information that is part of the record of the Board's November 19,2019 hearing), and any other state or federal agency having oversight authority regarding the County Road 22 Drain be complied with.*

DWR REVIEW

N.D.C.C. § 61-32-03 and N.D.A.C. § 89-02-01-09.1(1)(k) require the DWR and State Engineer to give final approval to applications proposing drainage of statewide or interdistrict significance. According to N.D.A.C. § 89-02-01-09.4,

> *In the state engineer's evaluation of statewide or interdistrict significance applications, the state engineer must use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The state engineer may use any information in the files and records retained by the state engineer's office or engineering information developed or obtained through investigation of the project area by the state engineer's staff. The state engineer may also request information or comment from independent sources, but is not required to delay the decision for more than thirty days from the date of request while waiting for comment from these sources. All information used must be relevant and is part of the record.*

The District provided all relevant documentary information submitted and oral testimony from the hearing to the DWR as well as supplemental information submitted by the Applicant for the Application. The District's primary document provided included the Index of the Record for the post-hearing (see file). This document includes all relevant information the District considered for its decision on the Application. Additional information that the DWR considered included any information provided by and any correspondence with the Applicant and the Applicant's engineer (see Exhibit 2). The most relevant documentation reviewed for the Application includes the following Exhibits:

DWR Exhibit 1 – Applicant's Engineer's Memorandum and supporting documents (see file)
DWR Exhibit 2 – Post-hearing Index, which includes the:

- Application for Surface Drain
- Districts' Order (see pages 37-42)
- Hearing transcript (see pages 46-59)

DWR Exhibit 3 – DWR Memorandum supporting Statewide and Interdistrict Significance, dated September 6, 2019
DWR Exhibit 4 – DEQ comment letters, dated November 7, 2019, and November 13, 2019

DWR REVIEW OF APPLICATION

N.D.A.C. § 89-02-01-09.2 lists the factors water resource districts must consider in the evaluation of an application to drain. The DWR must also consider these same factors when evaluating statewide or interdistrict significance applications. These factors include:

1. The volume of water to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained.
2. Adverse effects that may occur to the lands of lower proprietors. This factor is limited into the project's hydrologic effects such as erosion, duration of floods, impact of sustained flows, and impact on the operation of downstream water control devices.
3. The engineering design and other physical aspects of the drain.
4. The project's impact on flooding problems in the project watershed.
5. The project's impacts on ponds, sloughs, or lakes having recognized fish and wildlife values.
6. The project's impact on agricultural lands.
7. Whether easements are required.
8. Other factors unique to the project.

Factor No. 1: The volume of water to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained.
The project is a drain that will remove high water around Nelson County Road 22. The drain will discharge into a watercourse that is part of the Stump Lake Basin, which is the same watercourse the sloughs that are being drained naturally discharge into.

The Applicant's Engineer did not provide a volume of water nor was a volume estimated by the District that would be drained by the project. However, the purpose of the project is to lower the sloughs surrounding the intersection of 39th Street NE and Nelson County Road 22 by a depth of 1-foot.

I determined an approximate water surface area for the sloughs being drained from Google Earth Pro Imagery as 260 acres. Knowing that the project will drain approximately 1-foot of surface water, an approximate volume to be drained would be 260 acre-feet.

Since the proposed drain will discharge into the same watercourse that the sloughs currently drain into, the drained water should have no noticeable increase in flow or water quality in the watercourse that the project will discharge. Additionally, the proposed drain will be regulated by using 18-inch culverts and a set inlet elevation on the final culvert section. These factors will control the amount of water the proposed project can discharge.

Finally, the Applicant has argued that the project will not actually drain additional volume of water beyond the natural maintenance elevation of the sloughs. This elevation is considered 1515.2 feet NAVD88 from the KLJ's May 28, 2020 survey. The DWR is aware that a known reason for the project design is the Applicant's inability to gain access to the sloughs' natural outlet, thereby negating the ability to maintain the sloughs' outlet. Therefore, the project is intended to mimic the natural maintenance of the slough such that additional drainage in the Devils Lake Basin will not occur.

Factor No. 2: Adverse effects that may occur to the lands of lower proprietors. This factor is limited into the project's hydrologic effects such as erosion, duration of floods, impact of sustained flows, and impact on the operation of downstream water control devices.
The project should have minimal effects on downstream proprietors. The project discharges into what appears to be a well-established watercourse that should be able to contain any additional water the project may discharge. This is also being addressed by controlling the inlet elevation on the last section of pipe for the drain project.

Effects from erosion impacts could happen to the outlet on each proposed culvert and in the newly constructed drain channels if correct measures are not taken.

Factor No. 3: The engineering design and other physical aspects of the drain.
KLJ Engineering Devils Lake Office designed and developed the project. The project's ditch sections meet Nelson County Standards. The proposed 18-inch culverts are designed to meet North Dakota Stream Crossing Standards.

The Application states that a side slope of 4:1 will be used. However, during the hearing it was stated by the Applicant's Engineer that a side slope of 3:1 would be used. Since design plans were not submitted as part of the Application, it cannot be verified which side slope the proposed project was designed with. Either a 4:1 or 3:1 side slope would be acceptable if it meets the governing road standards for Nelson County.

KLJ stated during the hearing that all federal, state, and local requirements will be met.

Factor No. 4: The project's impact on flooding problems in the project watershed
The project should not have a negative impact on the watershed downstream of the project. As stated, the project is intended to mimic maintenance on the existing sloughs in this area.

The project's purpose is to alleviate flooding problems within the project's immediate watershed. With the design meeting all federal, state, and local standards, flooding problems around Nelson County Road 22 should be lessened. However, with only allowing a maximum 1-foot lowering of the sloughs, water will remain around County Road 22. While the project may solve flooding problems, the structural integrity of County Road 22 may not be corrected without further action.

Factor No. 5: The project's impacts on ponds, sloughs, or lakes having recognized fish and wildlife values.
With the project lowering the local sloughs by a max elevation of 1-foot, some wildlife values of the local sloughs may be lost. However, with the projects purpose of lowering the water in the slough, the sloughs will remain. In conclusion, while the sloughs may lose some wildlife values, it should be minimal.

Therefore, the project should not have any appreciable impact on ponds, sloughs, or lakes with recognized fish values.

Factor No. 6: The project's impact on agricultural lands.
The project should have a positive impact on agricultural lands. This being that if the local sloughs are lowered some additional land around the sloughs should become available for agricultural use.

There should be no impact on agricultural lands downstream of the project given the drainage will be confined to the well-established watercourse into which the project will drain.

Factor No. 7: Whether easements are required.
According to the Applicant's Engineer from the hearing testimony, easements will be required and should be in the process of being acquired. The project will mostly fall within the statutory right-of-way of Nelson County Road 22 and 39th Street NE (Williams Township).

Factor No. 8: Other factors unique to the project.
Peter Wax with the North Dakota Department of Environmental Quality issued a letter dated November 13, 2019 stating that "the drain must not cause an exceedance of the numeric water quality standard or violate the antidegradation policy as outlined in N.D.A.C. § 33.1-16-02.1".

The Applicant is meeting these requirements by setting the inlet elevation at 1515.20 ft NAVD88 on the final section of proposed culvert. This matches the natural outlet elevation of the adjacent sloughs. By doing this the sloughs impacting Nelson County Road 22 will lower in water surface elevation while also not allowing a substantial increase in the water discharging into the natural waterway thus not increasing the numeric water quality standard.

Recommendation

I believe no further information is required by the DWR to complete final review of Application No. 5254. In evaluating this Application, all information given for the District's consideration and information in the DWR's files and records was considered. Therefore, I believe this Application has been reviewed and investigated in accordance with N.D.C.C. title 61 and N.D.A.C. ch. 89-02-01. As a result of the DWR's investigation, as stipulated in N.D.A.C. § 89-02-01-09.4, the following is a compilation of all additional condition recommendations as described in this memorandum, which are in addition to the District's established conditions:

11. Permittee will not construct or improve the Project in any manner that exceeds the dimensions indicated in the Application or this Permit; any modification will require approval by DWR and the District.

12. Permittee As-built drawings of the Project must be provided to the DWR and District within 6 months after the Project is substantially complete. The as-built drawings must be provided at the Permittee's expense and may be subject to DWR and District's review and approval.

13. Access to the Project for the purpose of inspection shall not be denied to representatives of the DWR, State Water Commission, Nelson County, or District.

14. Inlet elevation to proposed pipe constructed in Section 20 shall not be installed lower than 1515.20 feet (NAVD 88).

Based on my review and investigation of the Project, I recommend the State Engineer approve Application for Surface Drain No. 5254, subject to the above conditions.

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SURFACE DRAIN PERMIT NO. 5254
WATER RESOURCE DISTRICT PERMIT NO. _____

This permit authorizes the permittee to drain a pond, slough, lake, sheetwater, or any series thereof, according to North Dakota Century Code (N.D.C.C.) § 61-32-03 and North Dakota Administrative Code (N.D.A.C.) ch. 89-02-01.

Name of Permittee:	**Nelson County Commission** **210 B Ave STE 201** **Lakota, ND 58344**
Water Resource District:	**Nelson County Water Resource District**
Feature to Be Drained:	**Pond, Slough, Lake, Or Any Series Thereof, Road Right-Of-Way Nelson County Road 22**
Purpose of Drainage:	**Flood Relief, Structural Integrity Nelson County Road 22**

Location of Drain (Department of Water Resources Location Map Attached):

Drain Alignment:	**W 1/2 of Section 16, N 1/2 of Section 20, NE 1/4 of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County**
Drain Outlet Location:	**NE 1/4 of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County**
Stream:	**McHugh Slough**
Basin:	**Devils Lake – Sheyenne River**

Is the proposed drainage of statewide or interdistrict significance?: **YES**

Design Data:

Type of project:	**Modification Of Existing Drain**
Contributing watershed area (approximate):	**2,157 Acres**
Assessment Drain?:	**No**
If YES, Name of Drain:	
Type of modification(s) (if applicable):	
Drainage Method:	**Gravity**

Permit Continued on Page 2

SURFACE DRAIN PERMIT NO. 5254 (CONTINUED)

Drainage Method Information:

Gravity Type:	**Ditch**	
Length of Drain:	**11,000**	**Feet**
Maximum Cut:	**5.5**	**Feet**
Bottom Width:	**3**	**Feet**
Side Slopes:	**4:1**	**S:1 Foot**

Drainage Method Information:

Gravity Type:	**Pipe**	
Length of Drain:	**6,000**	**Feet**
Pipe Diameter:	**1.5**	**Feet**
Pipe Slope:	**0.005**	**Inches / Foot**

According to North Dakota Century Code § 61-32-03 and North Dakota Administrative Code (N.D.A.C.) ch. 89-02-01, the Department of Water Resources (DWR), and the Nelson County Water Resource District (District) in their December 19, 2019 "Order Approving Application for Surface Drain No. 5254 – County Road 22 Drain (Order)," approve Surface Drain Permit No. 5254 subject to the below conditions and the conditions in the District's Order. This document serves to compile all District and DWR conditions attached to Surface Drain Permit No. 5254, for the County Road 22 Drain (Project) for Application for Surface Drain Application No. 5254.

CONDITIONS TO PERMIT

1. According to N.D.A.C. § 89-02-01-09.11, the project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.

2. According to N.D.A.C. § 89-02-01-09.11, construction must be completed within two years from the final approval date or the permit is void. The two-year period does not begin until any appeal is complete.

3. According to N.D.A.C. § 89-02-01-09.11, the Department of Water Resources or water resource district may attach other conditions to the permit if necessary. **If applicable, any other permit conditions adopted by the water resource district will be attached on separate sheets.**

4. This permit applies to the specific project and project location described and depicted in the permit application.

5. The Permittee, project owner, project sponsor, landowner, and any associated parties may be liable for all activity conducted and all effects caused by the construction, modification, and operation of the project as described in the application and this permit. Consequently, the receipt of this permit does not relieve the Permittee, project owner, project sponsor, landowner, or any associated parties from liability resulting from the construction, modification, or operation of the project approved under this permit.

6. If prior to or during construction items of substantial archeological value are discovered or a deposit of such items are disturbed, the Permittee shall cease construction activities in the area so affected. The Department of Water Resources must be promptly notified of the discovery and construction must not resume until the Department of Water Resources gives written permission.

7. The Permittee is responsible for obtaining any other local, state, or federal permits or approvals that may be necessary prior to construction.

8. According to N.D.A.C. § 89-02-01-09.11, all highly erodible drainage channels must be seeded to a sod-forming grass.

9. According to N.D.A.C. § 89-02-01-09.11, vegetative cover must be adequately maintained for the life of the project or control structures must be installed.

10. According to N.D.A.C. § 89-02-01-09.11, receipt of a permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.

SPECIAL CONDITIONS TO PERMIT

11. Permittee will not construct or improve the Project in any manner that exceeds the dimensions indicated in the Application or this Permit; any modification will require approval by DWR and the District.

12. Permittee As-built drawings of the Project must be provided to the DWR and District within 6 months after the Project is substantially complete. The as-built drawings must be provided at the Permittee's expense and may be subject to DWR and District's review and approval.

13. Access to the Project for the purpose of inspection shall not be denied to representatives of the DWR, State Water Commission, Nelson County, or District.

14. Inlet elevation to proposed pipe constructed in Section 20 shall not be installed lower than 1515.20 (NAVD 88).

RECOMMENDATIONS

15. Any and all requirements set by the U.S. Corps of Engineers, N.D. Department of Environmental Quality, and any other state or federal agency having oversight authority regarding the Project shall be complied with.

16. All appropriate erosion control measures must be taken during project construction and once the project is complete to ensure that no unnecessary erosion occurs due the implementation of this project.

John A Paczkowski

John Paczkowski, P.E.
State Engineer

Date: 12/21/2021

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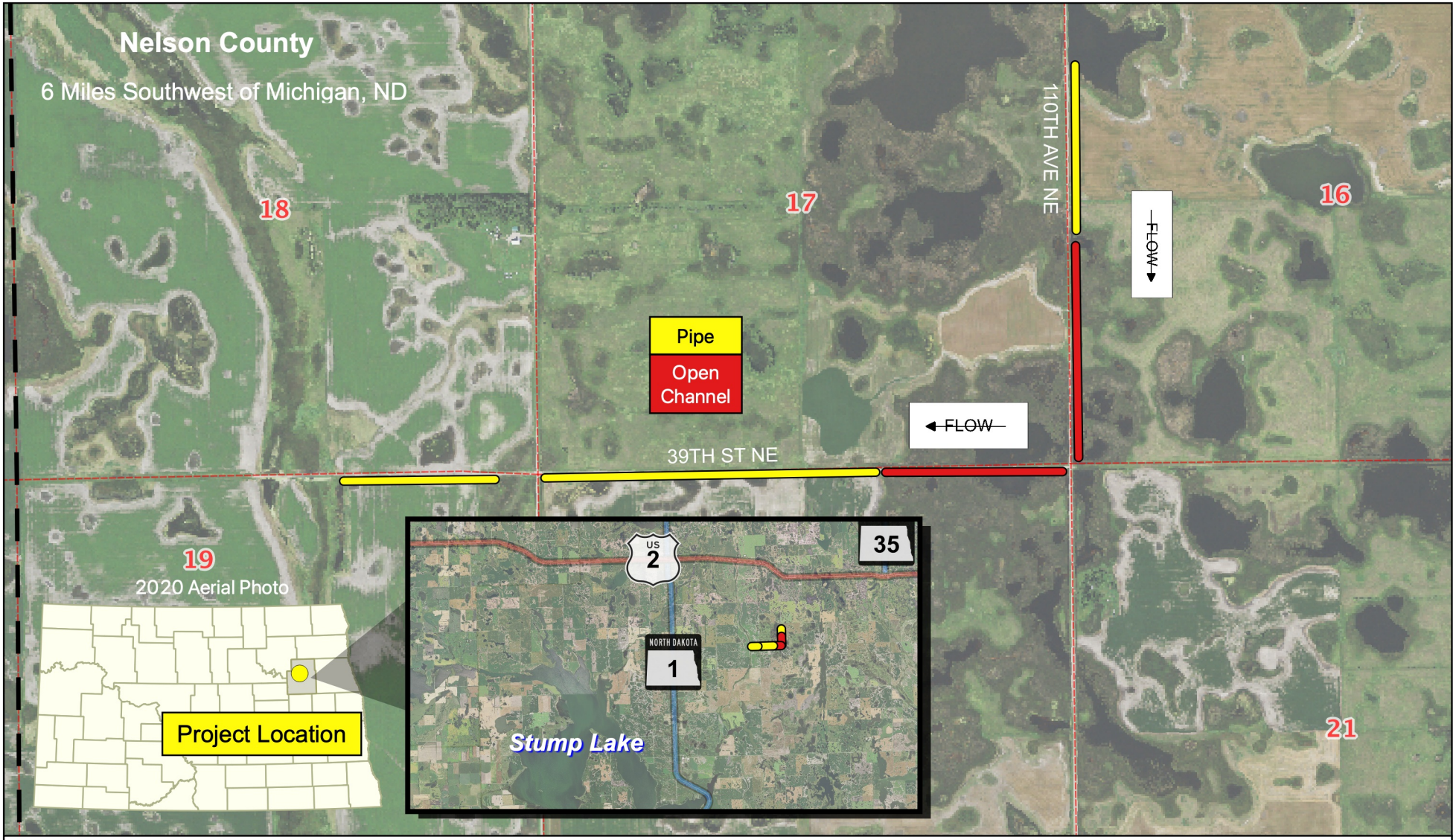


Drain Permit Application No. 5254 - Nelson County Commission

Nelson County Drain

W 1/2 Section 16, NE 1/4 Section 19, N 1/2 Section 20, T152N, R59W, Nelson County

Date: 10/6/2021
Prepared by: CWN

SWC Date Received : 6/18/20

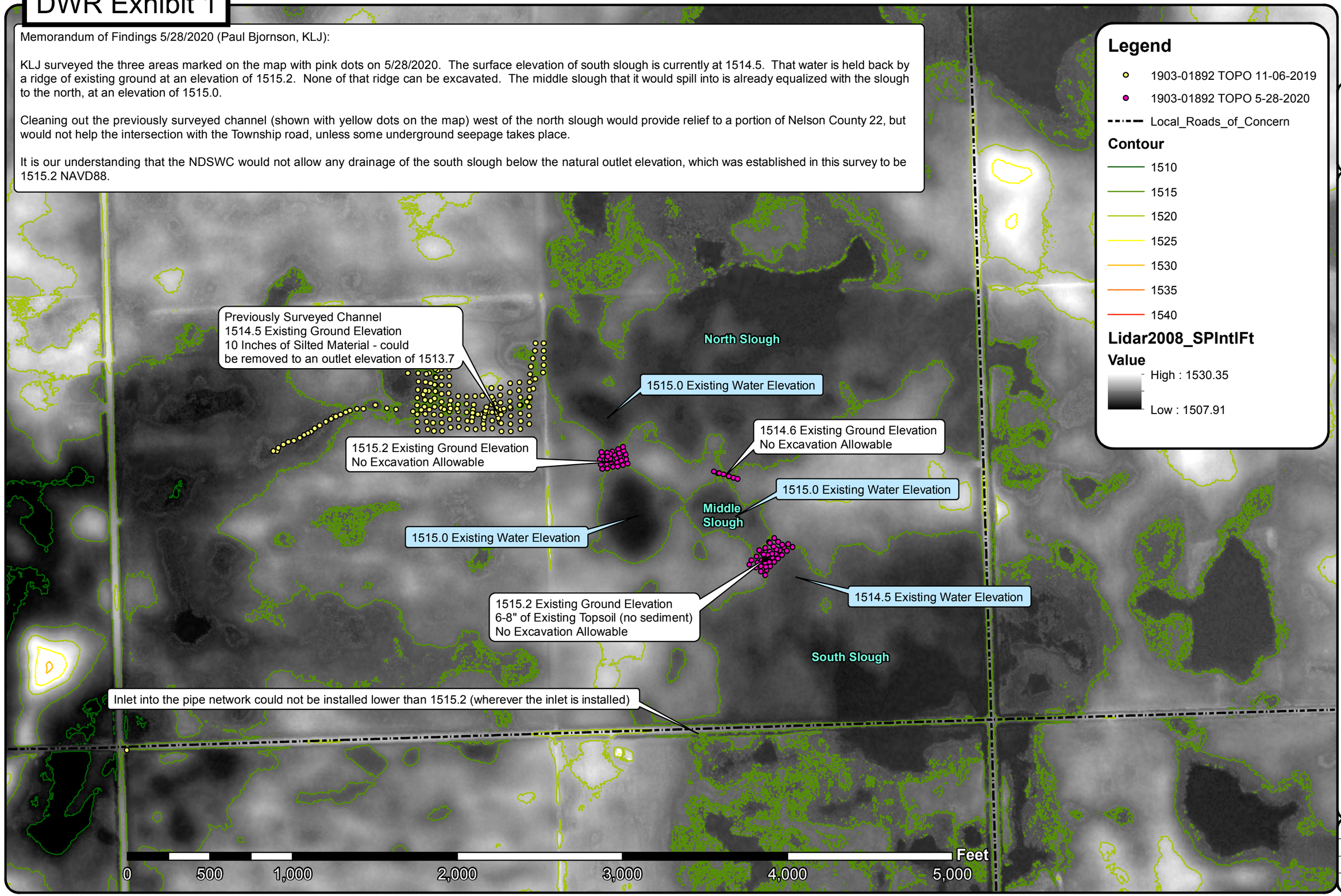
DWR Exhibit 1

Memorandum of Findings 5/28/2020 (Paul Bjornson, KLJ):

KLJ surveyed the three areas marked on the map with pink dots on 5/28/2020. The surface elevation of south slough is currently at 1514.5. That water is held back by a ridge of existing ground at an elevation of 1515.2. None of that ridge can be excavated. The middle slough that it would spill into is already equalized with the slough to the north, at an elevation of 1515.0.

Cleaning out the previously surveyed channel (shown with yellow dots on the map) west of the north slough would provide relief to a portion of Nelson County 22, but would not help the intersection with the Township road, unless some underground seepage takes place.

It is our understanding that the NDSWC would not allow any drainage of the south slough below the natural outlet elevation, which was established in this survey to be 1515.2 NAVD88.



Legend

- 1903-01892 TOPO 11-06-2019
- 1903-01892 TOPO 5-28-2020
- Local_Roads_of_Concern

Contour

- 1510
- 1515
- 1520
- 1525
- 1530
- 1535
- 1540

Lidar2008_SPIntIFt

Value

High : 1530.35

Low : 1507.91

N
W
E
S

Nelson County Drainage Survey 1903-01892 Task 2
Survey Area May 28, 2020
Summary of Existing Ground Elevations, Water Elevations, and Sediment Depths at Potential Outlet Locations

HORIZONTAL DATUM: US STATE PLANE NAD83, NORTH DAKOTA NORTH 3301, INTERNATIONAL FEET
VERTICAL DATUM: NAVD 88
BACKGROUND ELEVATION DATA SOURCE: IWI LIDAR 2008

PROJECT NUMBER:	1903-01892 Task 2
PROJECT LOCATION:	Nelson County 22
DATE:	JUNE 2, 2020
SCALE:	1:6,330.85

K:\PROJECTS\COUNTY\ND\NELSON\1903_02150_CR22DRAINHEARING\GIS\COPY_OF_DRAINAGEREFERENCEMAPUPDATEDPATH.MXD 4:36:26 PM PAULBJORNSON

1820 Walnut Street East, Suite 6
Devils Lake, ND 58301-3411
701 662 1960
KLJENG.COM

Memorandum

Date: 11/6/2019
To: Nelson County Commission
Copy to: Nelson County Highway Dept.
From: Anthony Herman, PE
RE: CR22 Outlet Survey with Soil Scientists

Remarks

Preliminary survey data was collected in June of 2017. Additional ground elevations were collected on Monday, November 4th, 2019. Survey Technicians (Jed Arneson, Dalton Tell) under the direct supervision of Professional Land Surveyor Christopher Ingersoll from KLJ and a Soil Scientist (David Breker) joined Anthony Herman on site to locate the outlet elevation of an adjacent slough threatening Nelson County Highway 22 (predominantly in the E ½ of Sec17, T152N, R59W, draining through the N ½ of SW ¼ of said section).

Prior to arriving on site, KLJ narrowed down the suspected outlet area via International Water Institute (IWI) 2-foot contours from 2010 Aerial LiDAR.

On site, KLJ profiled the approximate center line of the channel noting the high point. Total range of elevation though the area initially profiled was 0.38 ft, from ponded water to ponded water. Three locations around the approximate high point were then cross sectioned to verify the lowest point of outlet across the channel.

Accounting for the relatively flat slopes of the outlet area, the accuracy of the elevations collected, and the roughness of the terrain covered in grass, we estimate the current outlet elevation to be approximately 1,514.5 ft based on NAVD88, GEOID 12A.

Once the outlet location was found, David Breker, a North Dakota Registered Soil Classifier (registration certificate #41) extracted and inspected the soil profile around that area. Samples 1 and 2 showed a layer of silted material approximately 10 inches thick. Normally silted material may be removed during a maintenance operation of a water course. The two soil profiles along with David's findings is attached.

These two findings would put the natural, cleaned-out, outlet elevation at approximately 1513.7ft.

KLJ set two control points at GPS point numbers: 0010, and 0011, with elevations of 1518.97ft and 1513.98ft respectively. A listing of GPS points is attached, along with an aerial map.

Anthony Herman, PE
KLJ

Anthony Herman

From: David & Jan Breker <dbreker@rrt.net>
Sent: Wednesday, November 6, 2019 7:24 AM
To: Anthony Herman
Subject: RE: Nelson County - CR 22 Natural Outlet Elev.
Attachments: 002.jpg; 001.jpg

Anthony,

On November 4, we dug on the natural outlet between two wetland for the Nelson County project near CR 22. Sample 1 was an upland soil and sample 2 was a wetland soil. KLJ engineers surveyed the elevations and GPS locations through the natural outlet and the sample points.

I identified 10 inches of silty sediment on the natural outlet high spot between the two wetlands. Normally silty sediment can be removed during clean-out.

We did not see the CR 22 drain or any laterals drains. I did not make any determination how the drains or clean-out would affect the drainage of the two wetlands.

Attached are the two soil profiles.

David Breker

On Friday 11/01/2019 at 3:47 pm, Anthony Herman wrote:

> David & Chris, we just got the go ahead on this work.
>
> When would be a good time to meet on site and complete this?
> The County want's it done ASAP since they have a hearing on the project comping up in a little over a week.
>
> Internal file path: P:\County\ND\Nelson\1903-01892_CR22DrainageSurvey
>
> Thanks,
> Anthony Herman
> KLJ - Devils Lake
> 701-230-2709 Cell
>
> ---
>
> **From:** David & Jan Breker <dbreker@rrt.net>
> **Sent:** Thursday, September 26, 2019 2:39 PM
> **To:** Anthony Herman <Anthony.Herman@kljeng.com>
> **Subject:** Re: Nelson County - CR 22 Natural Outlet Elev.
>
> Anthony,

Attached is the ScopeFee for the Nelson County project. I used the document that has worked for other KLJ jobs. I didn't know the acres for the study area so I just put ??? at the end of the first paragraph.

Let me know if you need something different.

Dave Breker

On Thursday 09/26/2019 at 9:45 am, Anthony Herman wrote:

David,

Nelson county commission has asked us to find and determine the cleaned-out natural outlet elevation to a slough adjacent to CR 22.
I have attached a KMZ of the area to be searched. Note the "Potential Outlet Area" on the north end of all the old survey (from a previous project). The areas are based on that survey spot elevations and IWI topo lines.

They'd like to complete this survey and analysis asap.
Please call my cell when able to discuss, if this is something that you may be interested in.

Thanks,
Anthony Herman
KLJ
701-662-1960 Direct
701-230-2709 Cell
1820 Walnut Street E, Suite 6
Devils Lake, ND 58301-3411
kljeng.com

Nov 4 2019
David Bueker CR22 Nelson County 1514.38

SOIL Sampling Point: 1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	%	Redox Features Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-10	10YR 2/1						sil	no reaction
10-13	10YR 2/1						sic l	no reaction
13-16	10YR 3/1						cl	with few pebbles
16-22	10YR 6/4	20					cl	no reaction
~~22-30~~	10YR 4/2	80						
22-30	10YR 5/3	95	7.5YR 7/6	5	C	M	cl	slight reaction

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5) (LRR F)
- ___ 1 cm Muck (A9) (LRR F, G, H)
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1)
- ___ 2.5 cm Mucky Peat or Peat (S2) (LRR G, H)
- ___ 5 cm Mucky Peat or Peat (S3) (LRR F)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Loamy Mucky Mineral (F1)
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ High Plains Depressions (F16) (MLRA 72 & 73 of LRR H)

Indicators for Problematic Hydric Soils[3]:

- ___ 1 cm Muck (A9) (LRR I, J)
- ___ Coast Prairie Redox (A16) (LRR F, G, H)
- ___ Dark Surface (S7) (LRR G)
- ___ High Plains Depressions (F16) (LRR H outside of MLRA 72 & 73)
- ___ Reduced Vertic (F18)
- ___ Red Parent Material (TF2)
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if present):
Type: ___
Depth (inches): ___

Hydric Soil Present? Yes ___ No Y

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one required; check all that apply)

- ___ Surface Water (A1)
- H High Water Table (A2)
- S Saturation (A3)
- ___ Water Marks (B1)
- ___ Sediment Deposits (B2)
- ___ Drift Deposits (B3)
- ___ Algal Mat or Crust (B4)
- ___ Iron Deposits (B5)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
- ___ Salt Crust (B11)
- ___ Aquatic Invertebrates (B13)
- ___ Hydrogen Sulfide Odor (C1)
- ___ Dry-Season Water Table (C2)
- ___ Oxidized Rhizospheres on Living Roots (C3) (where not tilled)
- ___ Presence of Reduced Iron (C4)
- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ___ Surface Soil Cracks (B6)
- ___ Sparsely Vegetated Concave Surface (B8)
- ___ Drainage Patterns (B10)
- ___ Oxidized Rhizospheres on Living Roots (C3) (where tilled)
- ___ Crayfish Burrows (C8)
- ___ Saturation Visible on Aerial Imagery (C9)
- ___ Geomorphic Position (D2)
- X FAC-Neutral Test (D5) Red Canarygrass 100%
- ___ Frost-Heave Hummocks (D7) (LRR F)

Field Observations:

Surface Water Present? Yes ~~X~~ No X Depth (inches): ___
Water Table Present? Yes X No ___ Depth (inches): 3
Saturation Present? (includes capillary fringe) Yes X No ___ Depth (inches): 0

Wetland Hydrology Present? Yes V No ___

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

Nov 4, 2019
David Brecker CR22 Nelson Co 1514.49

SOIL Sampling Point: 2

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	%	Redox Features Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-10	10YR 2/1						sil	no eff
10-18	10YR 2/1	70					sicl	few pebbles
	10YR 5/2	10						strong effer.
	10YR 7/1	20						
18-26	10YR 7/1	95	7.5YR 4/6	5	C	M	cl	strong eff
	10YR 6/2	50						
	2.5Y 6/0	10						

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, CS=Covered or Coated Sand Grains. [2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators: (Applicable to all LRRs, unless otherwise noted.)

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5) (LRR F)
- ___ 1 cm Muck (A9) (LRR F, G, H)
- ___ Depleted Below Dark Surface (A11)
- X Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1)
- ___ 2.5 cm Mucky Peat or Peat (S2) (LRR G, H)
- ___ 5 cm Mucky Peat or Peat (S3) (LRR F)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Loamy Mucky Mineral (F1)
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ High Plains Depressions (F16) (MLRA 72 & 73 of LRR H)

Indicators for Problematic Hydric Soils[3]:

- ___ 1 cm Muck (A9) (LRR I, J)
- ___ Coast Prairie Redox (A16) (LRR F, G, H)
- ___ Dark Surface (S7) (LRR G)
- ___ High Plains Depressions (F16) (LRR H outside of MLRA 72 & 73)
- ___ Reduced Vertic (F18)
- ___ Red Parent Material (TF2)
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if present):
Type: ___
Depth (inches): ___

Hydric Soil Present? Yes X No ___

Remarks:

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one required: check all that apply)

- ___ Surface Water (A1)
- X High Water Table (A2)
- X Saturation (A3)
- ___ Water Marks (B1)
- ___ Sediment Deposits (B2)
- ___ Drift Deposits (B3)
- ___ Algal Mat or Crust (B4)
- ___ Iron Deposits (B5)
- ___ Inundation Visible on Aerial Imagery (B7)
- ___ Water-Stained Leaves (B9)
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- ___ Aquatic Invertebrates (B13)
- ___ Hydrogen Sulfide Odor (C1)
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- ___ Thin Muck Surface (C7)
- ___ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ___ Surface Soil Cracks (B6)
- ___ Sparsely Vegetated Concave Surface (B8)
- ___ Drainage Patterns (B10)
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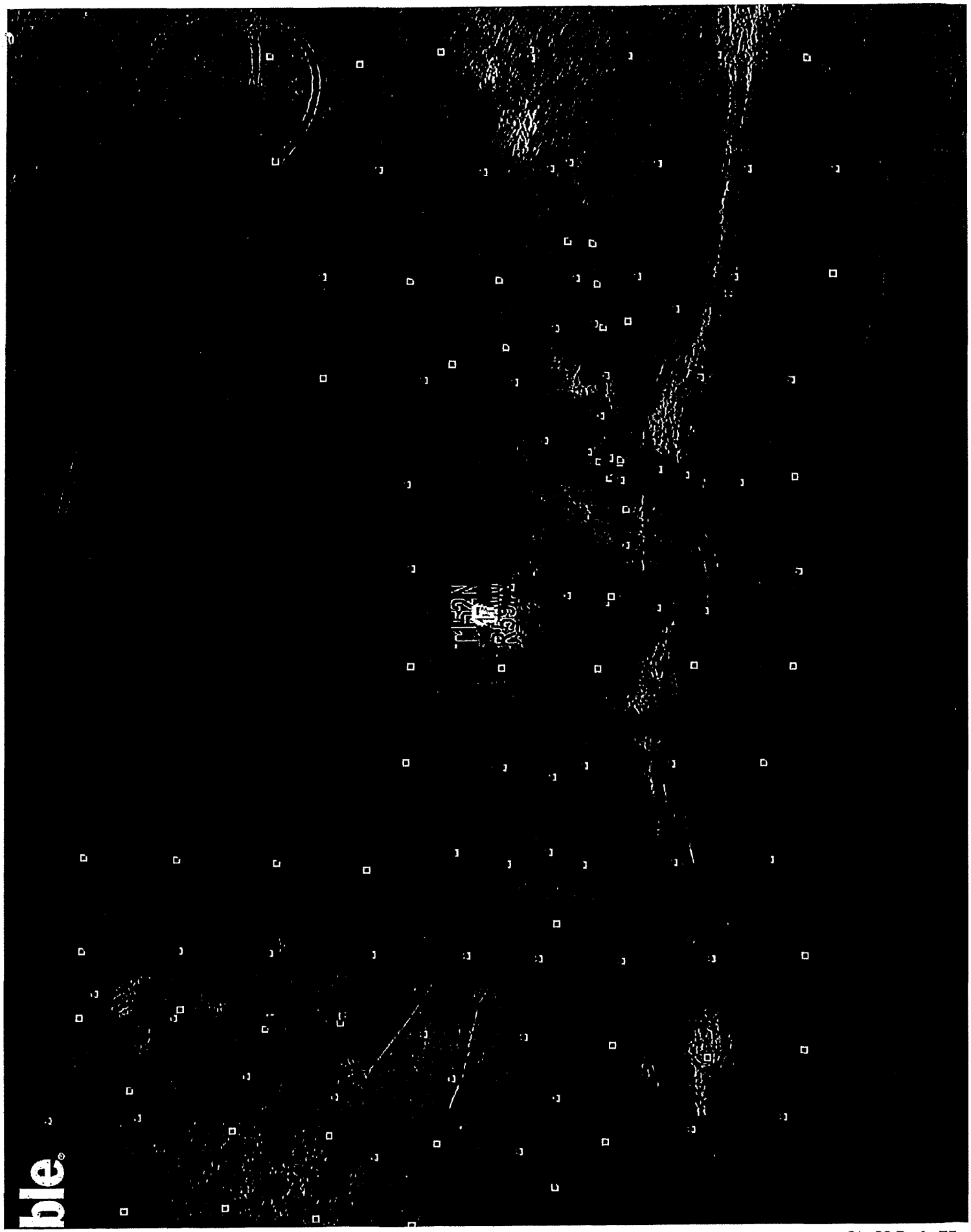
- ___ Saturation Visible on Aerial Imagery (C9)
- X Geomorphic Position (D2)
- X FAC-Neutral Test (D5) Reed Canarygrass 100%
- ___ Frost-Heave Hummocks (D7) (LRR F)

Field Observations:
Surface Water Present? Yes ___ No X Depth (inches): ___
Water Table Present? Yes X No ___ Depth (inches): 3
Saturation Present? (includes capillary fringe) Yes X No ___ Depth (inches): 0

Wetland Hydrology Present? Yes X No ___

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:



Cty 22 Drain 75

Name:
\\frgo-panz01\Data\IP\FRGO\frgo_projects\County\ND\Nelson\1903-01892_CR22DrainageSurvey\Survey\TBC\1903-01892 TOPO.vce
Name: US State Plane 1983
Datum: NAD 1983 (2011)
Modified: 11/6/2019 11:44:36 AM (UTC:-6)
Zone: North Dakota North 3301
Geoid: GEOID12A (Conus)
Reference number: 1903-01892
Vertical datum: NAVD88
Description: Outlet TOPO
Units: International Feet
Crew: J Arneson, D Tell
Field Book:

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DWR Exhibit 2

APPLICATION FOR SURFACE DRAIN

OFFICE OF THE STATE ENGINEER
REGULATORY DIVISION
SFN 2830 (3/2018)

Number	Number
(OSE USE ONLY)	(WRD USE ONLY)

This application must be submitted to the North Dakota Office of the State Engineer by **mail to 900 E Boulevard Ave, Dept. 770, Bismarck, ND 58505-0850, by fax to (701) 328-3696, or by email to swcregpermits@nd.gov.** To be complete, this application must include the additional information listed in the instructions on page 3.

If you need any assistance, please contact the Regulatory Division at (701) 328-2752.

OFFICE OF THE STATE ENGINEER USE ONLY
RECEIVED
DEC 10 2018
DATE RECEIVED

****** Additional Sheets May Be Attached If Necessary. ******

Water Resource District In Which Majority Of Project Watershed Is Located
Nelson County

Location Of Drain (drain center line) (use separate sheet(s) if necessary)

¼	Section	Township	Range	County
w1/2	16	152	59	Nelson
n1/2	20	152	59	Nelson

Drain Outlet Location And Information

¼	Section	Township	Range	County
NE	19	152	59	Nelson

Where Does The Drain Outlet Discharge?
☒ Road Ditch ☒ Stream, River, Coulee, etc. ☐ Assessment Drain
☐ Private Drain ☐ Pond, Slough, Or Lake ☐ Other (please explain) _____

Name Of Drain Or Water Body Where Drain Outlets (If applicable)
It drains into the Stump Lake Basin

Purpose Of Drainage (mark all that apply)
☐ Agricultural Drainage ☒ Flood Relief ☒ Other (please explain) Structural Integrity Nelson County Road 22

Feature To Be Drained (mark all that apply)
☒ Pond, Slough, Lake, Or Any Series Thereof ☐ Sheetwater/Overland Flow
☒ Other (please explain) Road right of way Nelson County Road 22

If Draining A Pond, Slough, Lake Or Any Series Thereof, How Far Down Will You Drain Them?
☐ Completely ☐ Partially

Design Data
☐ New Drain Construction ☒ Modification Of Existing Drain

Approximate Watershed Area Contributing To Drain, if known (acres)
TBD

Is This An Assessment Drain? ☐ Yes ☒ No
If Yes, Please List Name Of Drain

Type Of Modification To Existing Drain (If applicable)
☐ Deepening ☐ Widening ☐ Extending ☒ Rerouting ☐ Other (please explain) _____

Who Designed The Drain?
☒ Self ☒ Engineering Firm/Agency KLJ has done engineering ☐ Other (please explain) Brian Johnson

(continued on page 2)

Additional Project Details, Design Information, and Comments

The project will lower water one foot to relieve high water damage to Nelson County Road 22 to enhance safety and preserve the structural integrity of a well traveled county road. Slope 0-0.5 to mimic natural watercourse discharge elevation. Target elevation is 1511.6, the discharge elevation is 1509.

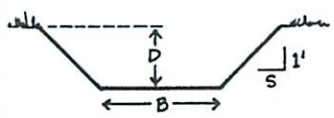
Drainage Method

☒ Gravity (See Section A) ☐ Pumping (See Section B) ☐ Placement Of Fill (See Section C)

(A) Gravity (if checked above)

Gravity Type (please fill appropriate fields below)
☒ Ditch ☒ Pipe

Ditch



Length Of Drain (feet)	Maximum Cut (D) (feet)
11,000 feet	5.5 feet to stay in road right of way.
Bottom Width (B) (feet)	**Side Slopes (S:1 foot)**
3 feet	4:1

Pipe Diameter (feet)	Pipe Slope (feet per foot)
1.5 feet for 6,000 feet	.005 inches per foot

(B) Pumping (if checked above)

Pumping Rate (gallons per minute)	Pumping Rate (cubic feet per second)
N/A	N/A

Pump Style ☐ Movable ☐ Fixed or Stationary

Pump Type ☐ Submersible ☐ Other _____

(C) Placement Of Fill (if checked above)

Fill Volume (cubic yards)
N/A

Other Information

Will The Drain Incorporate A Control Structure? ☐ Yes ☒ No

If Yes, Please Explain

Anticipated Construction Start Date	Anticipated Construction Completion Date
Summer/Fall 2018	Summer 2019

Applicant's Certification

I, the undersigned, am applying for a permit as required under North Dakota Century Code (N.D.C.C.) § 61-32-03. I understand that I must comply with N.D.C.C. § 61-32-03 and North Dakota Administrative Code ch. 89-02-01, and that I must adhere to any conditions required by the Water Resource District and State Engineer as part of an approved permit for this application. Additionally, I acknowledge that my project is accurately described and depicted in this application as I intend to construct it. My signature below acknowledges that I have read and agree to these statements.

Affiliation To Proposed Drain
☐ Landowner ☐ Renter/Tenant ☐ Water Resource District/Agency ☒ Other Nelson County

Applicant Name (if not an individual, please list organization name)
Nelson County Commission

Address	City	State	ZIP Code
210 B Ave E STE 201	Lakota	ND	58344

Telephone Number	Cell Phone Number	Email Address
701-247-2463	701-270-2354	jjtenneson@nd.gov

Applicant Signature: Nelson County Comm Bruce Ellertson Date: 12-4-18

Landowner Name (print) (if not the applicant)

Landowner Signature (if not the applicant)	Date

Office of the State's Attorney

Nelson County, North Dakota
210 B Avenue West, Suite 301
Lakota, ND 58344-7410

Phone: (701) 247-2138
Fax: (701) 247-2367

Jayme Tenneson
Nelson County State's Attorney

November 30, 2018

Garland Eberle
North Dakota State Water Commission
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505-0850

Mr. Eberle,

I am writing on behalf on Nelson County's involvement in the County Road 22 project within the county. The County is working diligently to resolve the issues that were created due to this drain project.

This specific drain project's only purpose is to work to maintain the integrity of Nelson County Road 22. Nelson County fears that without an outlet for this water County Road 22 is going to have to be closed to future travel due to the road conditions. This road is an arterial road in Nelson County and would be a large loss to the ag community that uses the road.

The specific project has no interest in draining surface water for any private individuals in this project. The only benefit that the County is concerned about gaining from this project is saving the county road.

While Nelson County intends on cooperating with any requirement from the North Dakota Water Commission, we are pleading for assistance in saving this county road.

Respectfully,

OFFICE OF THE STATES ATTORNEY
By:

Jayme Tenneson

JT/cw

INSTRUCTIONS FOR FILING A SURFACE DRAIN APPLICATION UNDER NORTH DAKOTA CENTURY CODE § 61-32-03

A person seeking to construct a surface drain having a watershed area of 80 acres or more (see Application Guidance below) must submit a completed permit application to the Office of the State Engineer. To be complete, the application must include all information listed below:

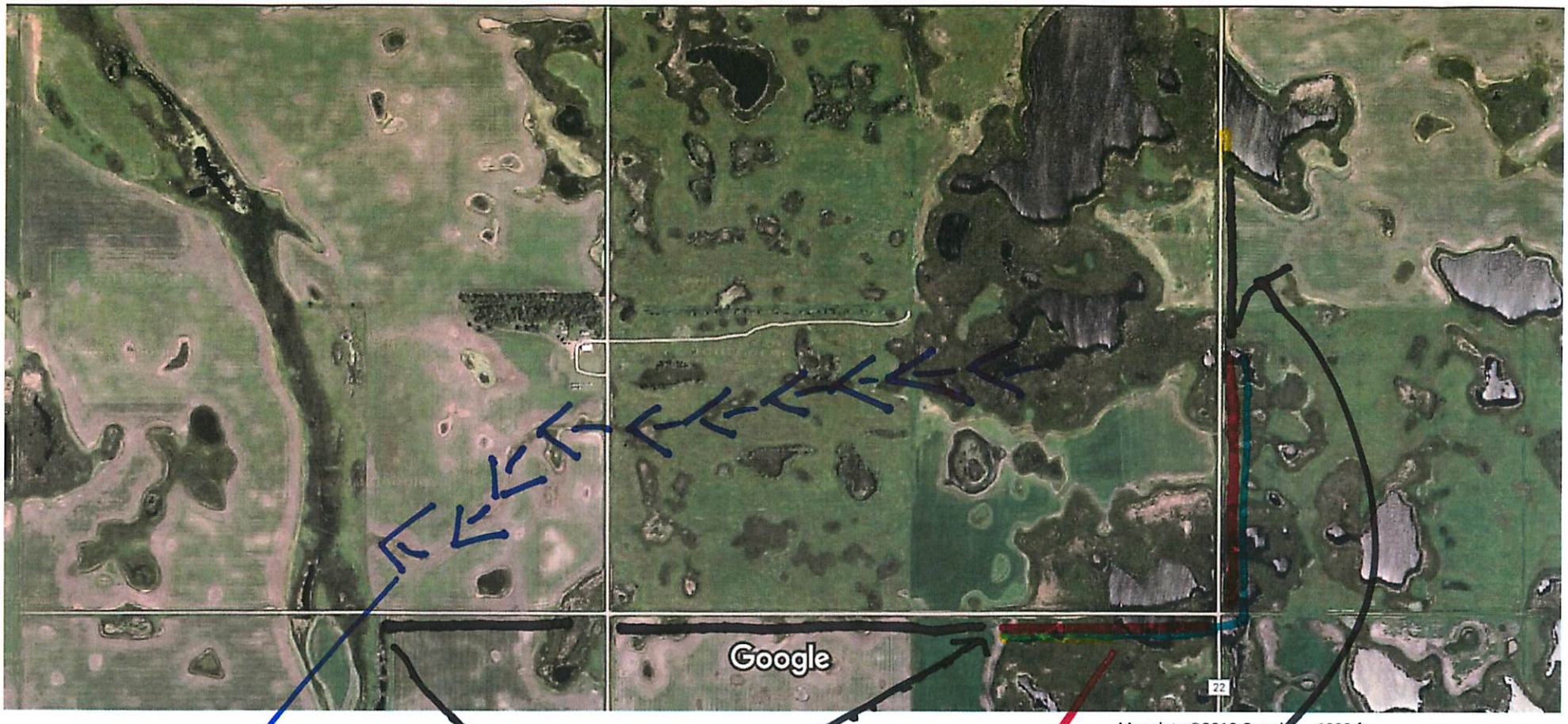
1. A completed "Application For Surface Drain" form.
2. A detailed drawing depicting the surface drain's location on an aerial photo. The drawing must include the drain's:
    a. Location description in Section-Township-Range format.
    b. Physical footprint of the drain layout including the locations of any, if applicable:
        i. Ditch and pipe locations,
        ii. Pump location(s),
        iii. Placement of fill,
        iv. Other appurtenant works, including weirs, dikes, control structures, etc.,
        v. Identification of existing road culverts utilized and descriptions of any proposed culvert additions or modifications.
    c. A depiction of the flow direction from the outlet location.
3. Any additional information, such as a downstream impact analysis, requested by the Water Resource District or State Engineer from the applicant to make an informed decision on the application.

Is a Permit Required?

North Dakota Century Code § 61-32-03 - Draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres or more, requires a permit from the state engineer and water resource district within which is found a majority of the watershed or drainage area. The determination of the watershed or drainage area must be made using the best available maps or surveys.

For more information on determining watershed and drainage areas, please visit http://www.swc.nd.gov/reg_approp/drainagepermits/.

Google Maps


Google
22
Map data ©2018 Google
1000 ft
Tile @ .05%
Tile@ .05%
Natural water Course
Open Drain area - Flat in open lot

Google Maps 10854-10898 33rd St NE, Lakota, ND 58344 to 3759-3783 110th Ave NE, Lakota, ND 58344 Drive 5.4 miles, 12 min

PEARSON CHRISTENSEN, PLLP
The Legal Advantage

24 North 4th Street
P.O. Box 5758
Grand Forks, ND 58206-5758

PHONE: (701) 775-0521
FAX: (701) 775-0524

Daniel L. Gaustad
dan@grandforkslaw.com

December 19, 2019

See Attached Mailing Matrix

Re: Nelson County Road 22 Project
Our File #90534.004

Dear Parties:

Please find enclosed the following for service upon you:

- Order of the Nelson County, North Dakota Water Resource District Board on Drain Application #5254 – Known as the County Road 22 Drain;
- A diskette containing a transcript of the November 19, 2019 Statewide or Interdistrict Significance Hearing and the exhibits from such hearing; and
- Affidavit of Service.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,

Daniel L. Gaustad

ORDER OF THE

NELSON COUNTY, NORTH DAKOTA WATER RESOURCE DISTRICT BOARD

APPROVING NORTH DAKOTA STATE WATER COMMISSION DRAIN

APPLICATION #5254 – COUNTY ROAD 22 DRAIN

[¶1] An Application for Surface Drain was filed with the Office of State Engineer (the "OSE"). See Exhibit 1 of the Transcript.[1]

[¶2] The OSE determined the County Road 22 Project is drainage of statewide or interdistrict significance and therefore the Nelson County Water Resource District Board ("the Board") set a hearing for November 19, 2019 at 10:30 a.m. in the Nelson County Courthouse, 201 West B Avenue, Lakota, North Dakota. See Exhibit 2 and 3 of the Transcript.

[¶3] The Board, pursuant to N.D.C.C. § 61-32-03 and N.D.A.C. § 89-02-01-09.1 and the time parameters described therein, did publish notice of the November 19, 2019 hearing with the official newspaper of Nelson County and mailed the notice prescribed therein to those parties enumerated in N.D.A.C. § 89-02-01-09.1(1)(a). See Exhibits 3, 4, 5, 6 of the Transcript, Transcript 7:20-10:13.

[¶4] The Board, pursuant to the N.D.C.C. § 61-32-03 and N.D.A.C. § 89-02-01-09.1 did conduct the hearing on November 19, 2019 in the Nelson County Courthouse, 201 West B Avenue, Lakota, North Dakota and the Board did allow submission of all relevant oral or written evidence. See Transcript.

[¶5] Exhibits 1 through 10 were made a part of the hearing without objection. Exhibit 1-10, Transcript 6:24-10:13.

[¶6] Several parties were present at the Board's November 19, 2019 hearing, as well as representatives of certain state and federal agencies. Parties that spoke or provided evidence are noted in the Transcript.

[¶7] The Board has determined, by virtue of its examination of the proposed County Road 22 Project and review of the data and information received at the November 19, 2019 hearing, that the benefits obtained from constructing the County Road 22 Project include but are not limited to (a) removal of flood waters, which have damaged the road, (b) improvement to the structural integrity of the road, and (c) enhance the safety of a well-traveled road.

[¶8] The Board, after considering information obtained as part of the November 19, 2019 statewide significance hearing and reviewing the exhibits, evaluated the Application in accordance with North Dakota Administrative Code § 89-02-01-09.2.

---

[1] All references to the "Transcript" shall refer to the proceedings and transcript of the November 19, 2019 Statewide Significance Hearing conducted by the Board.

FROM THE EVIDENCE AND TESTIMONY SUBMITTED AT THE HEARING, THE BOARD'S RATIONALE AND EVALUATION OF THE FACTORS ARE AS FOLLOWS:

1. The volume of water proposed to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained (N.D. Administrative Code § 89-02-01-09.2 (1))

Mr. Herman of KLJ Engineering testified that initial elevation determinations of the drainage area was based on a 2D evaluation. Transcript 13:20-22:4. However, the OSE has identified the area requiring a 3D volume analysis, thereby requiring additional evaluations by KLJ. Id. Mr. Herman indicated that upon completion of this additional 3D evaluation, engineering adjustments may be required. Id. Mr. Herman testified that whatever the outcome of the 3D volume evaluation, engineering adjustments, if any are needed, would be made in order to comply with the results. Id. Mr. Herman predicted that no impact of the watercourse is expected other than possible impacts related to water speed. Id.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

2. Adverse effects that may occur to the lands of downstream landowners. This factor is limited to the project's hydrologic effects such as erosion, flood duration, sustained flows impacts, and downstream water control device operation impacts (N.D. Administrative Code § 89-02-01-09.2 (2)).

Mr. Herman testified that any adverse effects to downstream landowners including hydrological effects, flow impacts, or impacts to downstream control devices are all part of the same calculation required to determine the downstream impacts and flow rate. Transcript 22:5-24:19. A determination is dependent on the total water volume being drained. Id. Mr. Herman stated that compliance with the OSE's requirements should result in no adverse downstream hydrological impacts. Id. Mr. Herman stated downstream effects must be considered and kept to a minimum. Downstream impacts of the County Road 22 Project will likely be insignificant and have less of an affect than doing a clean-out. Id. at 49:11-50:4.

In response to concerns from Jacob Brossart regarding downstream effects on road crossings, Mr. Herman testified that downstream analysis would presumably include a road crossing analysis. Transcript 33:10-34:18 and 43:2-44:37. If an adverse impact was found, Mr. Herman testified it would be mitigated in the engineering design. Transcript 43:2-44:37.

A question was posed by Susan Brossart regarding whether upstream impacts are being evaluated. See Transcript 35:6-36:1. Mr. Herman indicated upstream impacts within the drainage basin are being investigated because it would be a contributing factor as to how much water is flowing in the direction of the County Road 22 Project. Transcript 45:12-46:11. However, the drainage impact to the drain which the County Road 22 Project would drain into is not being looked at for upstream impacts because there should be none. Id. Mr. Herman

testified that if there are any impacts upstream, there will be impacts downstream, which would then be mitigated. Id. at 45:12-47:11.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

3. The engineering design and other physical aspects of the drain (N.D. Administrative Code § 89-02-01-09.2 (3)).

Mr. Herman testified that the design and physical aspects of the drain may need to be adjusted once a 3D evaluation has been conducted. Transcript 22:23-23:16. Primarily, the elevations may be adjusted but the size of the culvert should remain constant. Id. Mr. Herman described that with a drainage area of over 2,000 acres, an 18-inch culvert will be quite slow at releasing water and therefore does not expect any changes in that respect. Id. Mr. Herman acknowledged that any requirements from the OSE will be complied with and the project would be adjusted accordingly. Id.

In response to another question posed by Jacob Brossart regarding road inslopes, Mr. Herman testified the ditch slope adjacent to the road would have a side slope of 3:1, with a bottom width of three feet, as indicated within the Application. Transcript 44:20-45:11. Such slope specifications comply with County standards and will apply to both the county road and township roads. Id.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

4. The Project's impact on flooding problems in the project watershed (N.D. Administrative Code § 89-02-01-09.2 (4)).

Although the County Road 22 Project will not eliminate all of the flooding issues in this area, Mr. Herman testified that once in compliance with requirements from the OSE, the County Road 22 Project will help alleviate some of the flooding in this area. Transcript 23:17-24:19.

The purpose of the County Road 22 Project is to protect the structural integrity of County Road 22. See Exhibit 1 of the Transcript. Scott Nelson who owns property in the NW¼ of Section 20 in Williams Township, testified that the safety of improving the road is worth the project. Transcript 30:23-33:9.

Allan Anderson also testified in favor of getting the water off the roadway because County Road 22 is the only road that goes through the whole county, north and south. Transcript 36:3-37:13. Likewise, Tom Anderson testified to the importance of saving the road because there is water on the roadway making it too dangerous for everybody. Transcript 42:8-18.

No evidence or testimony was presented that disputed this protective purpose of the County Road 22 Project.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

5. **The project's impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values (N.D. Administrative Code § 89-02-01-09.2 (5)).**

Assuming compliance with OSE requirements, Mr. Herman testified there should be no impact on ponds, sloughs, streams, or lakes having recognized fish and wildlife values. Transcript 24:20-25:5. However, the 3D evaluation would need to be conducted prior to Mr. Herman certifying there would in fact be no impact. Id.

Accordingly, the determination of the Board, after considering the above evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

6. **The project's impact on agricultural lands (N.D. Administrative Code § 89-02-01-09.2 (6)).**

The only testimony on this factor was from Mr. Herman in which he testified that there should be no impact, beyond a small amount of water that is taken out of the adjacent sloughs. Transcript 25:6-13. There may be a little extra arable land, but Mr. Herman believed that unlikely. Id.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

7. **Whether easements are required (N.D. Administrative Code § 89-02-01-09.2 (7)).**

Mr. Herman noted easements are assumed to be in process at this point. Transcript 25:14-26:2. It is undetermined if County Road 22 or the township road have an owned right of way and assumes it is all statutory. Id. Mr. Herman presumes an additional easement for the drainage project would be needed. Id.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

8. **Other factors unique to the project (N.D. Administrative Code § 89-02-01-09.2 (8)).**

The U.S. Corps of Engineers has submitted some correspondence regarding the County Road 22 Project and Mr. Herman states full compliance is intended. Transcript 26:3-13, and Ex. 9 (Bates No. Cty 22 Drain 98-104). Mr. Herman testified KLJ is aware of their concerns and are working to comply with their requirements. Id.

North Dakota Environmental Quality provided correspondence and while Mr. Herman testified he had not reviewed those letters, the intent would be full compliance with this agency's requirements. Transcript 26:14-27, Ex. 7 and 8.

Mr. Herman testified that at this time, additional studies are pending to re-establish the outlet elevation which will dictate the rest of the answers to questions posed in the hearing. Transcript 52:1-8.

Accordingly, the determination of the Board, after considering the evidence, testimony and rationale as to this factor support a conclusion of approving the Application, subject to compliance with any adjustments to the engineering plans when the 3D analysis per OSE requirement is completed.

9. **Determination of drainage area.**

The Board determines, pursuant to N.D.A.C. § 89-02-01-09.2(j), the area to be drained is portions of the E½ of Section 17, the W½ of Section 16, the NE¼ of Section 20 and the NW¼ of Section 21, Township 152, Range 59, Williams Township, Nelson County, North Dakota.

NOW THEREFORE, BASED UPON THE FOREGOING, HAVING INVESTIGATED THE APPLICATION AND COUNTY ROAD 22 PROJECT IN ACCORDANCE TO N.D.C.C. § 61-32-03 AND N.D. ADMINISTRATIVE CODE §§ 89-02-01-09.1 AND 89-02-01-09.2, THE FOLLOWING ORDER OF THE BOARD IS MADE:

A. The Application is **APPROVED ON THE CONDITION** that the requirements, if any, of the U.S. Corps of Engineers, the OSE, the North Dakota Department of Environmental Quality (each of who presented information that is part of the record of the Board's November 19, 2019 hearing), and any other state or federal agency having oversight authority regarding the County Road 22 Drain be complied with.

B. The Board directs and authorizes the Application be completed in accordance with this Order, and this Order be forwarded to all the parties who received notice of the Hearing, being all those required to received the same under N.D. Administrative Code § 89-02-01-09.1.

C. The Board directs and authorizes the Application, a copy of this Order and the Transcript, with all exhibits thereto, being all the information reviewed by the Board in considering the Application be forwarded to the OSE within twenty (20) days.

[¶35] The Board directs and authorizes the Application be completed in accordance with this Order, and this Order be forwarded to all the parties who received notice of the Hearing, being all those required to received the same under N.D. Administrative Code § 89-02-01-09.1.

[¶36] The Board directs and authorizes the Application, a copy of this Order and the Transcript, with all exhibits thereto, being all the information reviewed by the Board in considering the Application be forwarded to the OSE within twenty (20) days.

[¶37] DATED the 18 day of December, 2019.

Nelson County Water Resource District Board

Ben Varnson

By: Ben Varnson
Its: Chairman

NOTICE

[¶38] THIS ORDER APPROVING THE APPLICATION IS NOT A PERMIT TO DRAIN UNTIL THE STATE ENGINEER APPROVES THE APPLICATION.

AFFIDAVIT OF SERVICE BY MAIL
FOR
COUNTY RD. 22 DRAIN
NELSON COUNTY, NORTH DAKOTA

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF GRAND FORKS)

[¶1] Ella Braaten, being first duly sworn upon oath, deposes and states: that she is of legal age, a citizen of the United States, and is not a party to, nor has she an interest in the above-entitled matter; that on the 19th day of December, 2019, she served a copy of following attached documents:

- Order of the Nelson County, North Dakota Water Resource District Board on Drain Application #5254 – Known as the County Road 22 Drain

[¶2] by U.S. mail, postage prepaid, and addressed as follows:

- See Attached Mail Listing

[¶3] **DATED** this 19th day of December, 2019.

Ella Braaten
Ella Braaten

[¶4] Subscribed and sworn to before me in Grand Forks County, North Dakota, this 19th day of December, 2019.

JENNY O'HARA
Notary Public
State of North Dakota
My Commission Expires Feb. 15, 2022

Jenny O'Hara
Notary Public for the State of North Dakota

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Devils Lake, ND 58301

Janet Anderson / Janet Solar
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Michigan, ND 58259

Elroy Knauer
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Cologne, MN 55322

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Devils Lake Joint Water Resource Board
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Rodney Brossart
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John Paczkowski
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Bismarck, ND 58505

Philip B. Janney
C/O Kay F. Guon
P.O. Box 1086
Vancouver, WA 98666-1086

Vicki Cookman
1365 Arrowwood Dr.
Brea, CA 92821

IN RE: Application for Surface Drain #5254

- -

TRANSCRIPT OF PROCEEDINGS

10:38 o'clock a.m.

November 19, 2019

Taken Before: Nelson County Water Resource District

Taken At: Nelson County Courthouse
Community Room
210B Avenue West
Lakota, North Dakota

Taken By: Joy Filipski, Court Reporter

A p p e a r a n c e s:

Nelson County Water Resource District:

Ben Varnson, Chair
David Sateren
Todd Whitman
Charlene Varnson

For Nelson County Water Resource District:

PEARSON CHRISTENSEN, PLLP
P.O. Box 5758
Grand Forks, North Dakota 58206-5758
By: DANIEL L. GAUSTAD, ATTORNEY AT LAW
AND
ELLA BRAATEN, ATTORNEY AT LAW

For Nelson County Commissioners:

KLJ
Anthony Herman, P.E.
Paul Bjornson
P.O. Box 1077
Devils Lake, North Dakota 58301

Note: Also present are people attending the hearing (Please see Sign-up Sheets)

I N D E X

EXHIBITS

(Whereupon,
the following proceedings were had to-wit:

MR. GAUSTAD: All right. We're going to call this, I guess this hearing to order.

My name is Dan Gaustad, I represent the Nelson County Water Board.

Next to me is Ella Braaten, she's an associate in my office.

Next to, to me is Ben Varnson, Todd Whitman, David Sateren and Charlene Varnson, all with the Nelson County Water Board.

Before we go on, there is a sign-up sheet, we're asking that everybody sign in.

Can you pass that around?

MR. HERMAN: Absolutely.

MR. GAUSTAD: A couple of things, procedural points.

I trust most of you haven't been a party to a, a hearing like this.

What we're going to do is, first, we're going to open it up to the Applicant, which is Nelson County, to present whatever information that they want to present.

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Today is the date for those interested in this particular project, I'm calling it the County Road 22 Drain Project, to present testimony, evidence, documentary evidence or oral testimony, okay.

It's not the day to cross-examine people. It's to present whatever information you may have that would assist the, the Nelson County Water Board to make a determination on whether to approve or not approve the drain permit.

What we'll do is, like I said, we'll start with the Applicant first, Nelson County, because they're the Applicant on the drain permit.

Then we will, I'll go down, and there's a, a number of named governmental entities that we're required to provide Notice, we'll allow them to speak.

Then those that, individuals that received Notice, if those folks are here, they can present their evidence.

Any others that are in attendance because of the public Notice, they may not have received a specific Notice, but they're here

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because we published Notice, we'll let them speak.

And then we'll turn it, once that's completed, we'll turn it back to the Applicant, Nelson County, and they can provide whatever kind of rebuttal type of evidence they have.

And at that point the hearing will, will end.

I can tell you that the Board will not be making a decision today. They'll receive the information and make a decision later on, okay.

A couple of things that we need to be mindful of is, one, only one person can talk at a time.

We've got a court reporter here to take everything down and if there are multiple people talking, she can't get it down properly, okay.

Second, speak as loudly as you possibly can so that the court reporter can hear you and the rest of the folks can hear you as well, okay.

Before we go on, there is some, some documents that I want to be made part of

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the record, and I'll explain what they are and we'll go through each of the documents. I don't have a copy for everybody today.

The first will be Exhibit 1, which is the Application for Surface Drain that was submitted by Nelson County to the State Engineer's Office. That'll be Exhibit 1.

Exhibit 2 is a letter dated September 6, 2019, from the, the State Engineer, Garland Erbele, I think that's how --

MR. MAGER: Eberle, --

MR. GAUSTAD: -- you pronounce it, --

MR. MAGER: -- yep.

MR. GAUSTAD: -- okay, --

MR. HERMAN: Yep.

MR. GAUSTAD: -- with various attachments. That's -- Exhibit 2 is Bates stamped County 22 Drain 3 through 13.

Exhibit 3 is the Notice of Statewide Significance, the Notice that was sent out and that was published in the paper, that'll be Exhibit 3, and that's Bates stamped County 22 Drain 14 and 15.

Exhibit 4 is a compilation of the

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letters that were sent out by my office to various parties providing them Notice of today's hearing. Exhibit 4 is Bates stamped County 22 Drain 16 through 56.

Exhibit 5 is an Affidavit of Service by mail that notes who received the Notice of the, of the hearing by mail, okay. That's -- Exhibit 5 is Bates stamped County 22 Drain 57, Pages 57 through 59.

Exhibit 6 will be the Affidavit of Publication. This is the Notice of today's hearing that was published in, in the paper. And it notes when it was published, on October 31 and November 7 of 2019. That's Bates stamped County 22 Drain 60.

And a Bates stamp is just the number in the lower right-hand corner to, kind of a page numbering system.

Exhibit 7 is a letter dated November 7, 2019, from L. David Glatt, he's the Director for the North Dakota Department of Environmental Quality, making comments regarding the project. And that's Exhibit 7 and that's Bates stamped County 22 Drain 61 through 63.

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Exhibit 8 is another letter, this is dated November 13, 2019, from Peter Wax. He's an environmental scientist with the Division of Water Quality with the North Dakota Environmental Quality Department. And that's Exhibit 8. And that's Bates stamped County 22 Drain and it's Bates stamped number 64.

Next exhibit is Exhibit 9. These are documents that were received from the County Auditor, which is the file regarding this particular drain that are received from the County Auditor on November 14. It's all the documents they had compiled and they had kept in their file regarding this particular drain that would have been available for public inspection.

Those documents are Bates stamped County 22 Drain and it's Bates stamped 65 through 196.

And then the last exhibit is Exhibit 10. This would have been documents that the County Auditor had provided to the Water Board regarding this project. I think there's duplication. In fact, I know there's duplication.

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The items in Exhibit 10 also appear in Exhibit 9. But just for clarity purposes, these are documents that were supplied on November 1 of 2019 to the Water Board from the, from the County Auditor and Exhibit 10 is Bates stamped County 22 Drain 197 through 214.

So does anybody have any objection to those Exhibits being part of the record for today's hearing?

Anybody have any objection?

All right. Hearing none, all of those will be made part of the record for today's hearing.

All right. I guess at this point we will turn it over to the Applicant and they can make their presentation.

Be mindful that you got a court reporter here, so don't talk too fast, so she can get it down, but --

And if there are documents that, that you intend to present, let me know and we'll need to mark those as an Exhibit for today's hearing, okay.

I'll turn it over to the County and I understand KLJ will be presenting for the

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County. Is that correct?

MR. HERMAN: Yep.

MR. GAUSTAD: Okay.

MR. HERMAN: Okay. All right. So --

MR. GAUSTAD: If you could just state your name.

MR. HERMAN: Anthony Herman.

MR. GAUSTAD: Okay. Thank you.

MR. HERMAN: Let's see, where do I want to start.

It became known to the County that County Road 22 was sig -- was facing some significant, significant drainage issues, primarily with the structural stability of the road. It resulted from the adjacent sloughs.

We were also made aware that the township roads right to the south was also suffering some significant issues.

That was kind of the genesis of, of the permit application.

Some construction did take place and the, the permit was then started.

And that permit was based on the constructed plans of what had already taken

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place.

And the permit itself basically has the, the plans or the approach detailed out in it.

And that approach is to mimic what's called a snag and clear operation in what would have been the natural drain of the project.

And the County decided that rather than going up to (indicating) the, the natural outlet of the slough complex and doing a snag and clear there, that they would do something that would be a little bit easier to maintain and a little bit more direct to do (indicating) a drainage through the ditches of the adjacent county road and along with the, the township road going off to the west there.

MR. GAUSTAD: What county roads are you referring to?

MR. HERMAN: That is -- let me zoom in real quick.

That is County Ro -- or -- County Road 22. And the township road is 39th Street Northeast.

MR. GAUSTAD: 22 runs north and

south or --
MR. HERMAN: 22 runs north and south, it is also known as 110th Ave. Northeast.
MR. GAUSTAD: And what's the township road again?
MR. HERMAN: And the township road is 39th Street Northeast.
And this is all bordering the south and west -- or south and east lines of Section 17.
Let's see here.
The, the drain is composed of both open channel and 18-inch culvert. The total drain length is approximately 11,000 feet, of linear feet. And roughly 6,000 of those linear feet is going to be 18-inch culvert buried.
MR. GAUSTAD: Why? Why did you have to do the buried culvert?
MR. HERMAN: So buried culvert is because the topography in the area does not allow for deep enough cuts.
And it fra -- frankly is, is more economical to do the, the culvert rather than cutting very deep and running the safety issues

with the road or purchasing additional right of way.
And so you'll see on the, the, the overall plans in the permit application that the, the buried pipe is through areas that are, are either significantly deep cuts or just too close to the road to stay within the, the right of way allotted.
The areas through the slough, primarily in the southern southwest -- or, sorry, southeast corner of Section 17, those are the, predominantly the area where the, the open channel is. And that is done so that we do not disturb that slough more than necessary.
As it currently sits, the project is, is somewhere in the neighborhood of three, three-quarters complete.
So we do have pipe in the ground.
And most of the pipe is solid pipe. There are sections, however, of, of perforated drain tile pipe. However, those sections have been significantly restricted or removed and replaced with solid pipe. And that was to reduce or eliminate the lateral effects of drainage.

Our current approach, or I guess prior to this last week, was to set the inlet elevation of the pipe network, so the last, the, the last step of the process before it goes into the, the pipe network and does not have any more open channel, or the end of the open channel, was to set that invert elevation to the same elevation as what would have been the naturally drained outlet elevation. And this is a cleaned-out condition of the natural outlet.
We did run into a complication with that, namely, on the interpretation of the State Water Commission's two items that they would not allow and so additional study is needed at this point to figure out what elevations the southern slough here actually does connect into this northern slough in Section 17.
There is two identified areas that are areas of concern. One is the likely outlet, the other is a likely secondary outlet, they're very close in elevation, so both would likely need to be studied.
But those would set the outlet

elevation that would be allowed for this second slough to then abide by the State Water Commission's two requirements of no additional drainage to the Devils Lake Basin and no draining of a slough beyond its natural outlet elevation.
So that is where the project sits, more or less, right now.
We are at a standstill with the outlet elevation still being determined, but that total downstream outlet elevation is, is already set.
And that was communicated already to the, to the, to the Commission and, and to the Water Board as such.
MR. GAUSTAD: Okay. So I want to make sure I understand and I, just for my own edification, is that the State Engineer or State Water Commission is asking you to review your outlet elevation further?
MR. HERMAN: Correct.
The, the two, the two items that the State Water Commission had said on their, I believe it's your Exhibit 2, is the letter from, dated September 6, from the North Dakota

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Be Legendary, State Engineer. Titled, Surface Drain Permit Application No. 5254.

And it says, the OSE will not issue a permit if the District's or OSE's elevation of the Application and project yields, additional watershed area contributing to Devils Lake or Stump Lake or additional water being drained below the natural outlet of the slough complex.

And the, the roadblock became an issue on that first item, additional watershed being contribu -- or area contributing to Devils Lake or Stump Lake, had previously been understood as a 2D area, i.e., a surface area.

However, the, and the OSE provided insight on that this last week, or I believe it was the end of the previous week, basically saying that that area or that watershed area is in fact a 3D volume, which is what triggered the investigation into the secondary outlet.

Because at the outlet elevation that was discovered or established for the total slough area, these sloughs are no longer connected at that outlet elevation.

And so if we were to drain through

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this southern slough with an open channel, we would effectively be adding that difference in elevations to that drainage area. We'd be adding that additional water to the basin.

And that was the State Water Commission's or the OSE's concern, was that that has to be validated or engineered around.

MR. GAUSTAD: Okay. So you did your evaluation under this surface or 2D evaluation and the --

MR. HERMAN: Yep.

MR. GAUSTAD: -- Office of the State Engineer is saying you needed the, you need to do a 3D --

MR. HERMAN: Correct.

MR. GAUSTAD: -- evaluation?

And that, and that, and once you do those different 2D or 3D, what, what are you calculating?

MR. HERMAN: So we're calculating total volume of water, but more importantly, also the flow rate of that water. Basically, what sort of, what sort of drainage speed should we be expecting.

MR. GAUSTAD: Okay.

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MR. HERMAN: But the, the State Water Commission's primary concern was, if we take our roughly 10 inches off of this main, this upper slough area, with this primary outlet, and we happen to drain through this other slough area, that 10 inches has to be either shown that it's equivalent for both sloughs or we have to take the higher or lesser water volume of the two, or I guess it'd be the, the higher elevation of the two outlets.

So if this outlet in the middle here does come up higher, and we still would like to do an open channel through this southern slough, we will have to use this outlet elevation, rather than our previous outlet elevation, and that's because we cannot add additional water to the drainage basin beyond what would naturally flow out.

MR. GAUSTAD: So after you do the 3D evaluation, you may have to adjust your engineering to account for --

MR. HERMAN: Correct.

MR. GAUSTAD: -- this additional volume?

MR. HERMAN: Our, our --

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MR. GAUSTAD: And that would make --

MR. HERMAN: -- initial assumption was that our volume of water is going to be based on the 3D area of these two spaces, assuming they were one; whereas, in that first item that the State mentions, they don't agree that this is necessarily one slough, slough complex.

MR. GAUSTAD: Okay.

MR. HERMAN: So we actually have to verify that it is either one slough complex so we can use one outlet elevation or else we have to use the, the higher of the two.

MR. GAUSTAD: So the intent would be, whatever the outcome is of the 3D, you will make whatever engineering adjustments need to be made for this particular project?

MR. HERMAN: Correct.

MR. GAUSTAD: Okay.

Okay. So, sitting here today, do you know -- you know what the water volume proposed to be drained under the 2D evaluation, right?

MR. HERMAN: No, that, that

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analysis hasn't been done because there's no purpose in figuring out a volume for a 2D area --

MR. GAUSTAD: Okay.

MR. HERMAN: -- until you have the 3 -- or until you have the 2D area set.

Which, in this case, that is what is, is under investigation.

MR. GAUSTAD: Okay. But the State Engineer is, is telling you that there can't be any more water volume contributed to Devils Lake, --

MR. HERMAN: Exactly.

MR. GAUSTAD: -- correct?

MR. HERMAN: Beyond what would have naturally flowed in a cleaned-out situation.

MR. GAUSTAD: Okay. And, and that would be the same -- do you know, then, would that be the same with respect to any impact of the watercourse in which the water will be drained? There, there wouldn't be any impact then, right, if, if you're complying with what the State Engineer is asking?

MR. HERMAN: We would expect no impacts, other than possibly impacts related to

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water speed.

And that is why we will ac -- with -- that is why we are investigating the, the total flow rate of the drainage as well.

MR. GAUSTAD: Okay. What about any adverse effects to downstream landowners, accounting for what the State Engineer is asking you to do? What type of hydrological effects will there be as far as erosion, flow impacts or sustained flow impacts or any impacts to downstream control devices?

MR. HERMAN: That is part of that same calculation of figuring out downstream impacts, along with the flow rate.

It's all dependent on the total water volume being drained or being let loose and the, the, the rate at which it does so.

MR. GAUSTAD: So if you comply with what the State Engineer is saying, is there going to be any hydrological impacts downstream?

MR. HERMAN: There should not.

MR. GAUSTAD: Okay.

And the design and physical aspects of the drain will also be adjusted once you do

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this 3D evaluation, correct?

MR. HERMAN: Correct.

We'll be adjusting the, the elevations primarily.

The size of culvert is assumed to be main -- remain constant.

But at this point, with a drainage area of over 2,000 acres, -- I guess I could throw that up quick.

A, a drainage area of, of over 2,000 acres, an 18-inch culvert will be quite slow --

MR. GAUSTAD: Okay.

MR. HERMAN: -- at releasing that water, so we don't anticipate any changes in that respect.

MR. GAUSTAD: What about, again, assuming -- and, and you -- if I'm hearing you right, and I think the Board's hearing you right, you'll do what the State Engineer is telling you to do and then adjust the, the, the project accordingly?

MR. HERMAN: Absolutely.

MR. GAUSTAD: Okay. And so once you do that, and that, that's the premise of my

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questions now, --

MR. HERMAN: Uh-huh.

MR. GAUSTAD: -- okay, is that once you do that, what's the impact of the flooding problems in this, with respect to the watershed, the project watershed, do you know?

MR. HERMAN: It, it should alleviate the pro -- the, the flooding issues. We can't say for certain at this point that it will completely get rid of them, based on unknown flow rates yet. But our assumption at this point is, is that it will improve the project area significantly.

MR. GAUSTAD: And that's County Road 22 and --

MR. HERMAN: That is --

MR. GAUSTAD: -- this township --

MR. HERMAN: -- County Road 22, along with the township road alongside.

MR. GAUSTAD: What about, again, assuming you, you follow what the State Engineer's asking, what impact on, will there be on ponds, sloughs, streams or lakes that have recognized fish and wildlife values?

MR. HERMAN: We should have no

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impact on those, although, I cannot certify that at this time.
MR. GAUSTAD: Okay. Until you've done your evaluation?
MR. HERMAN: Correct.
MR. GAUSTAD: What about impact on agricultural lands?
MR. HERMAN: Again, we should have no impact on that, beyond the little bit of water that we do take out of the adjacent sloughs.
We might see a little extra arable land there, but I wouldn't count on it.
MR. GAUSTAD: Okay. Do you know if there would be any easements that will be required?
MR. HERMAN: Yes. Easements are assumed to be in process at this point.
Right now, it is undetermined if County Road 22 or the township road have any, have any actual right of, owned right of way. At this point it's assumed that it's all statutory.
And for statutory right of way, we would assume that you would have need or you

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would need an, an additional easement for the drainage project itself.
MR. GAUSTAD: Okay. And I understand the U.S. Corps of Engineers has at least submitted some correspondence regarding this project. What's the intention of the Applicant with respect to complying with the, the Corps of Engineers?
MR. HERMAN: Full compliance with them.
MR. GAUSTAD: Okay.
MR. HERMAN: We're aware of their, of their concerns and we are working on them.
MR. GAUSTAD: Okay. What about, and there was a couple of letters that we got from the North Dakota Environmental Quality, I don't know if you've had a chance to review those, but to the extent that that agency has any requirements, what's the intention of the Applicant to comply with those requirements?
MR. HERMAN: The intent is compliance, however, I have not reviewed those, those letters as of yet.
MR. GAUSTAD: Okay. Anything else that you want to add, anything regarding this

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project?
MR. HERMAN: None at this time.
MR. GAUSTAD: Okay. Very good.
The next party that we'll ask if there's a representative from the North Dakota State Game & Fish Department?
And they're not here.
How about the North Dakota Department of Health?
The North Dakota Department of Transportation?
They're not present.
I do know that the State Engineer's Office is here. Would you --
MR. MAGER: Correct.
MR. GAUSTAD: -- like to --
MR. MAGER: There's no comments at this time.
MR. GAUSTAD: And your name is?
MR. MAGER: Brian Mager, for the record.
MR. GAUSTAD: Okay. And just so that -- what's your position with the State Engineer's Office?
MR. MAGER: So Water Resource

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Engineer in the regulatory division for the Office of the State Engineer.
MR. GAUSTAD: Okay. And you have no comments?
MR. MAGER: No comments at this time.
MR. GAUSTAD: Okay. Thank you.
Is there a representative from the Natural Resource Conservation Service?
None.
How about, is there a representative from Ramsey County Water Board?
None.
How about from Ramsey County?
None.
Benson County Water Board?
None.
Benson County?
Nobody.
Eddy County Water Board?
No one.
Eddy County?
Okay.
Devils Lake Joint Water Resource Board?

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Not present.
Central Township in Nelson County, is there a representative from Central Township?
How about Dodds Township, in Nelson County, is there a representative that wants to make any comments?
How about, I don't know if I'm going to pronounce this right, Wamduska Township? Did I pronounce that right?
MR. BREKKEN: Uh-huh.
MR. VARNSON: Close enough.
MR. GAUSTAD: Close enough?
Yes.
And your name?
MR. BREKKEN: Clifford Brekken.
MR. GAUSTAD: Okay. And you're a representative with the Township Board?
MR. BREKKEN: I'm the township supervisor.
MR. GAUSTAD: Okay. Could you stand up, just -- do you, do you have any comments you want to make?
MR. BREKKEN: No, I'm just here to observe.

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MR. GAUSTAD: Okay, very good. Thank you.
Did you get the name?
How about from Williams Township? Any representative from Williams Township?
Do you want to stand up?
And your name?
MR. FRANZEN: Bill Franzen.
MR. GAUSTAD: Okay. And do you have any comments regarding the project?
MR. FRANZEN: I, I don't, I'm just --
MR. GAUSTAD: Okay.
MR. FRANZEN: -- observing.
MR. GAUSTAD: Very good.
All right. I'm going to go through a list of individuals that received letters and if they want to stand and, and present any evidence, we ask them to do so.
Is Rose Anderson here?
No.
Robert Anderson?
Scott Nelson?
MR. NELSON: Yep.
MR. GAUSTAD: Yes. Do you want to

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stand, make any comments?
MR. NELSON: Yes, I guess the, the tile goes through two different quarters of mine.
I don't see any deleterious effects to my land whatsoever.
And as a land -- or a patron or, or citizen of the area, certainly the safety of, of improving the road, you know, I believe is, is worth the project.
MR. GAUSTAD: And what -- the property that you own in this area, can you give the legal description?
MR. NELSON: Yeah, it would be the northwest quarter of 20. So just (indicating) to the left of that yellow line.
Northwest quarter.
MR. HERMAN: Oh.
MR. GAUSTAD: Of 20?
MR. NELSON: Of 20, yeah.
MR. GAUSTAD: Okay.
MR. NELSON: So --
MR. GAUSTAD: And we're all in, I can't remember what township we're in.
MR. VARNSON: Williams.

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MR. GAUSTAD: Williams --
MR. NELSON: Williams --
MR. GAUSTAD: -- Township.
MR. NELSON: -- Township, yeah.
MR. GAUSTAD: Okay.
MR. NELSON: So it'd be the northwest quarter of 20 and the northeast quarter of 19.
MR. GAUSTAD: Okay.
Anything else?
MR. NELSON: No.
MR. GAUSTAD: Thank you.
How about Janet Anderson or Janet Solar?
Geritz Farm, is there a representative from Geritz Farm here?
No.
Paulette Anderson?
No, not present.
Anybody from an entity called Have Only Positive Expectations, LLLP?
MR. NELSON: That's me as well.
MR. GAUSTAD: Oh, okay.
MR. NELSON: That's actually the owner of that land --

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MR. GAUSTAD: Okay.
MR. NELSON: -- I just talked about.
MR. GAUSTAD: And --
MR. NELSON: It's, it's mine as well.
MR. GAUSTAD: That's Scott Nelson speaking.
MR. NELSON: Yes.
MR. GAUSTAD: Jacob Brossart. I see that he's present. Do you have any comments regarding the project?
MR. JACOB BROSSART: Does this --
MR. GAUSTAD: Can you stand up and --
MR. JACOB BROSSART: There's, now you say there's going to be further study done to make sure that the water that's coming through won't have any adverse effects to downstream?
MR. GAUSTAD: I think that the, the way it's, the, the State Engineer is asking the Applicant to do a further analysis based upon a 3D volume analysis versus a 2D volume analysis.
MR. JACOB BROSSART: And would that

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include like road openings downstream to verify that they're large enough or won't adversely affect them?
MR. GAUSTAD: I don't know.
And maybe we'll have the Applicant, if you could put that down to, to, to answer?
Any other comment, Mr. Brossart?
MR. JACOB BROSSART: Now, when the adjoin -- open ditches are put in, will the slopes of the road be acquired to like a State standard or are they just going to be left as they are now?
MR. GAUSTAD: Don't know that answer either and we'll allow the Applicant to answer that question when he, he returns.
Any other comment?
MR. JACOB BROSSART: That's all for now.
MR. GAUSTAD: Okay. Thank you.
Rodney Brossart, do you have any comment regarding the project?
I see you're present.
MR. RODNEY BROSSART: Not at this time.
MR. GAUSTAD: Okay, very good,

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thank you.
Susan Brossart, do you have any comment?
MS. SUSAN BROSSART: Yes, I do.
MR. GAUSTAD: Okay.
MS. SUSAN BROSSART: Any upstream effect being done? What's coming from way up north?
MR. GAUSTAD: That I don't know.
And what areas are you, are you referring to?
Do you have like a description or just --
MS. SUSAN BROSSART: Well, just every -- anything that's, that's flowing into that northeast Stump Lake drain, is anything from up north going to be affected in coming down from there that's flooding?
MR. GAUSTAD: And I'm, and I'm not following. You're saying, because of the project, is it going to be impacted or --
MS. SUSAN BROSSART: Yes.
MR. GAUSTAD: Okay.
That I don't know.
Any other comment?

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MS. SUSAN BROSSART: No.
MR. GAUSTAD: Okay.
Allan Anderson, --
MR. ANDERSON: Yeah.
MR. GAUSTAD: -- I see you're here.
MR. ANDERSON: Yep.
MR. GAUSTAD: Do you have any comments?
MR. ANDERSON: Just that I do agree that we should save the road, it's the only road that we got that goes through the whole county, north and south. So I'm in favor of getting the water off the road.
MR. GAUSTAD: Okay. Thank you.
Elroy Knauer?
MR. ANDERSON: He's not here.
MR. GAUSTAD: Did I pronounce that right?
MR. VARNSON: Knauer.
MR. GAUSTAD: K-n -- K-n-a-u-e-r, correct?
He's not present?
No. Okay.
Lynn Estvold?
Not present.

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Philip Janney or Kay F. Guon?
Not present.
How about Robyn Jacobsen or Vicki Cookman?
Any one of them present?
I see we've got somebody from the U.S. Fish & Wildlife Service here.
MR. VOSE: Yes.
MR. GAUSTAD: Do you have any comments regarding the project?
MR. VOSE: Yeah. Brian Vose.
I was just curious, they said three-quarter -- three-fourths of the project is done. Could you point on the map of what's not done?
Or just --
MR. GAUSTAD: And --
MR. VOSE: With a highlighter?
MR. GAUSTAD: -- you'll have to just -- and maybe -- can we get a copy of this map?
MR. HERMAN: Absolutely.
MR. GAUSTAD: Okay. And --
MR. HERMAN: It's --
MR. GAUSTAD: -- is that --

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MR. HERMAN: -- in digital form.
MR. GAUSTAD: That's fine.
MR. HERMAN: Okay.
MR. VARNSON: You had one earlier that showed the additional red line. A previous slide?
MR. HERMAN: Previous line?
MR. GAUSTAD: Either that or you're going to have to describe, as best you --
MR. HERMAN: Okay.
MR. GAUSTAD: -- can, where the project is completed and what's not completed.
MR. HERMAN: So I, I may ask the contractor to, to correct me if I'm incorrect on this because my information may be a little old at this point.
But downstream here, basically everything in green is already in.
And this is all along that township road.
MR. GAUSTAD: The east-west township road?
MR. HERMAN: Yep.
There is a section in here that is red, I believe this is also in place, correct?

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MR. JOHNSON: There's -- those two wetlands aren't in.
MR. HERMAN: Okay.
MR. JOHNSON: That one.
And then the one west of you.
MR. HERMAN: Yep.
MR. JOHNSON: That one.
MR. HERMAN: Okay.
MR. JOHNSON: They're not in.
MR. HERMAN: And then I know --
MR. JOHNSON: And the very end of that, very end of the green there isn't in.
MR. HERMAN: Yep. That's the elevation that we're going to be setting to the, to the outlet elevation once determined.
And this channel is all, all currently constructed, as is this.
And this along County Road 22.
MR. GAUSTAD: So basically all of County Road 22 is completed?
MR. JOHNSON: No.
MR. HERMAN: No, the, the pipes between the channels are not in yet.
MR. GAUSTAD: The open channels are completed, but the pipes that have to be

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installed are not?
MR. HERMAN: Correct.
MR. GAUSTAD: Okay.
And anything, --
MR. HERMAN: I believe --
MR. GAUSTAD: -- and anything around the township road that affects a wetland hasn't been done; would that be fair?
MR. JOHNSON: Yep.
MR. HERMAN: Yeah.
MR. GAUSTAD: Okay. And your name again is?
MR. VOSE: Brian.
MR. JOHNSON: Brian Johnson.
MR. GAUSTAD: No.
Brian Johnson?
MR. JOHNSON: Yep.
MR. GAUSTAD: Thank you.
Can you --
MR. VOSE: And this project is going to provide 10 inches of relief or -- and is permanent?
MR. HERMAN: We, we assume 10 inches of relief as permanent -- or I -- is it my turn?

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MR. GAUSTAD: Yeah, --
MR. HERMAN: Okay.
MR. GAUSTAD: -- go ahead.
MR. HERMAN: Sorry I jumped in there.
And that -- but that number is based on this primary outlet.
That will change if this secondary outlet is significantly different.
MR. VOSE: And then that'll give --
MR. HERMAN: Or the difference of a --
MR. VOSE: -- the road how much freeboard? Will it give it 2 feet, 2 and a half feet? 10 inches?
MR. HERMAN: So 10, 10 inches gives us approximately, what was it, 1.8 feet.
Yeah, so a little, a little under 2 feet of freeboard.
And that is calculated from centerline, not from the shoulder.
MR. VOSE: Okay.
MR. HERMAN: So our effective, our effective freeboard is probably in that 18-inch range.

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MR. GAUSTAD: Anything else?
MR. VOSE: That's all I have.
MR. GAUSTAD: Okay.
There may be others that are present here that have not, didn't get a specific letter, that are here because of the Notice, the publication Notice.
Tom Anderson?
MR. ANDERSON: Yeah.
MR. GAUSTAD: Okay. Go ahead.
MR. ANDERSON: Yeah, I'm just, I'm just here, I live, I live on that road and we just, we've got to get that water off, it's, it's too dangerous for everybody, so --
MR. GAUSTAD: Okay.
MR. ANDERSON: If we can just get the water down to save the road, that's all we care about.
MR. GAUSTAD: Okay. Thank you.
Anybody else that's present that I have not specifically named that wants to present any comment regarding the project?
All right. Hearing none, I am going to ask the, the Applicant, the KLJ representatives, to respond to the comments by

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the Brossarts, if they, if they can.
And Jacob Brossart had a couple of questions, as did Susan Brossart. If you could respond to them, that would be great.
MR. HERMAN: Absolutely.
So the, the question of, does downstream analysis include road crossing analysis.
My assumption would be, yes, it does, because item number two on the North Dakota Administrative Code says, adverse effects that may occur to downstream landowners. This factor is limited to the project's hydrologic effects, such as erosion, flood duration, sustained flow impacts and downstream water control devices or device operation impact.
So my interpretation or assumption in, in that is that, yes, we would be considering any adverse effects to downstream culverts, road, low water road crossing, that sort of, that sort of thing.
MR. GAUSTAD: And what would you do then if there was a, a, a --
MR. HERMAN: We --

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MR. GAUSTAD: -- finding or --
MR. HERMAN: We would, we would mitigate that in the engineering design.
MR. GAUSTAD: Okay.
MR. BJORNSON: Can -- I guess is this -- can I add to that? That's --
MR. GAUSTAD: Your name is?
MR. BJORNSON: Paul, Paul Bjornson, with KLJ.
MR. GAUSTAD: Okay.
MR. BJORNSON: I, I don't anticipate that that would include sizing those or -- to the --
MR. HERMAN: And to the --
MR. BJORNSON: It would not be a crossing standard on those to the public -- the Century Code, it would just be whether or not we're affecting them.
MR. GAUSTAD: Okay. All right.
MR. HERMAN: Okay. And the second question that I'd written down here was a question on the road inslopes.
I -- the, the ditch slope adja -- adjacent to the road.
And the permit application does

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actually specify that as a 3:1 and -- if I remember correctly.

Let me, quick, verify that.

Yes, a side slope of 3:1, with a bottom width of 3 feet.

So that would be pursuant to County standards, as, as they have already adopted for the rest of the County system.

And that is -- that will be applied to both the county road and the township roads heading east and west.

The upstream effect question. I'm not entirely certain what, what the, what the question is, is asking; however, if you're asking what are the upstream impacts within this specific drainage basin, yes, we are looking at that, of course, because it, it's a contributing factor to how much water is coming our way.

If you're asking how much -- or what the drainage impact would be to the drain that we are draining into, and that would be this primary channel heading up north, crossing U.S. 2 between Lakota and Mapes, and stretching all the way down to Stump Lake, no, we don't

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have anything that we would be looking at for upstream impacts to that because we shouldn't have any. At least not that we would assume at all.

If we have any impacts upstream, we will certainly have impacts downstream, which is our mandate to, to mitigate or to analyze and, and mitigate, so --

Hopefully that answers your questions properly. If there's anything additional, let me know.

MR. GAUSTAD: Do you have any further comment, Jacob Brossart?

MR. JACOB BROSSART: No.

MR. GAUSTAD: Rodney Brossart, any further comment?

MR. RODNEY BROSSART: Yeah. What does that mean, upstream? Is that work all done already or what?

MR. HERMAN: Well, that's what I'm trying to figure out, what you mean by upstream?

MR. RODNEY BROSSART: Well, it's --

MR. HERMAN: Upstream of what?

MR. RODNEY BROSSART: Of this whole

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drainage channel that you claim has immense capacity.

MR. HERMAN: I --

MR. RODNEY BROSSART: That coulee.

MR. HERMAN: Okay. I guess I would, I would filter back to our item number two that we have to consider and that's downstream impacts.

If we have downst -- if we have no downstream impacts, we wouldn't have upstream either.

MR. GAUSTAD: Any further comment?

MR. BJORNSON: Can I add, supplement that a little bit, too?

This is Paul Bjornson again.

We're setting the in -- inlet elevations of the culvert network to be the same as what it would be if we did a clean-out on the natural outlet, which it wouldn't even really need to permit.

MR. HERMAN: Yeah.

MR. GAUSTAD: Understood.

Any further comment, Mr. Brossart?

MR. RODNEY BROSSART: Yes. Are you saying that what's already out there, as far as

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rock crossing, you're just going to raise them?

MR. GAUSTAD: Can you answer that question?

MR. RODNEY BROSSART: Or are you --

MR. HERMAN: Not likely. We would mitigate any issues in the engineering design.

MR. RODNEY BROSSART: So how do we get across it?

MR. HERMAN: Again, that would be part of the having no downstream impacts.

MR. VARNSON: Have him locate that spot for us.

MR. GAUSTAD: And you -- which, which location are you referring to? Do you have a description?

MR. RODNEY BROSSART: Well, there's more than one.

MR. GAUSTAD: Where are they?

MR. RODNEY BROSSART: They're all downstream.

MR. GAUSTAD: Where?

MR. JACOB BROSSART: There's --

MR. RODNEY BROSSART: There's County Road 4, there's -- between Section, I think it is 25 and 36.

They're between 36 and Section 1, I believe it is, in Wamduska.
That section.
MR. GAUSTAD: Okay.
MR. RODNEY BROSSART: Water's all backed up.
So I think we need to get some studies.
MR. GAUSTAD: Okay. Can you respond to that?
MR. HERMAN: I guess my response would be the same as before, is item number two basically tells us that we need to consider those downstream effects and make sure that they're minimum.
MR. GAUSTAD: Okay.
MR. BJORNSON: And that they're -- I -- this is Paul Bjornson again.
And it's unlikely that those would be significant, because the cleaned-out elevation of the channel is following the natural outlets, would have a much higher capacity than the 18-inch culvert going into it.
MR. HERMAN: Yeah.

MR. BJORNSON: That would drain the same area.
So the -- it would have less than, of an affect than doing the clean-out.
MR. RODNEY BROSSART: So what you're saying is is you, you need to get this study done before you can actually do anything?
MR. HERMAN: Correct, at this point.
MR. BJORNSON: Yeah.
MR. HERMAN: That study is in progress.
MR. GAUSTAD: And you're, the study you're referring to is to address the State Engineer's 3D volume evaluation, correct?
MR. HERMAN: And the remainder of these analysis questions, yes.
MR. GAUSTAD: Okay. As a result of that --
MR. HERMAN: Yeah.
MR. GAUSTAD: -- 3D evaluation?
MR. HERMAN: Yep.
MR. GAUSTAD: Okay.
Anything else, Mr. Brossart?
MR. RODNEY BROSSART: Are, are we

going to get these studies?
MR. GAUSTAD: I don't know.
I suspect if it's provided to the, to the Nelson County Water Board, which I suspect it would be, that that certainly can be made available.
Any other comments, Mr. Brossart?
MR. RODNEY BROSSART: I guess not. I mean, --
MR. GAUSTAD: Okay.
MR. RODNEY BROSSART: -- if you don't --
MR. GAUSTAD: Thank you.
MR. RODNEY BROSSART: -- have any studies, I guess what more is there to say?
MR. GAUSTAD: Okay.
Ms. Brossart, do you have anything further?
MS. SUSAN BROSSART: No.
MR. GAUSTAD: Okay. Thank you.
Turn it right back to the Applicant for any further comment from any rebuttal of or further comment about what anybody has said here today.
Do you have anything else?

MR. HERMAN: I think that concludes the questions that were brought up and the concerns that I've marked down.
At this point, like I said previously, we are pending that additional study to, to establish the, or re-establish the outlet elevation which will dictate the rest of our answers to these questions.
MR. GAUSTAD: Okay. And I probably should have asked the county commissioners, too, if they had any comments or they wanted to interject anything.
MR. ELLERTSON: We feel it's a worthy project.
MR. GAUSTAD: Okay. And your name is?
MR. ELLERTSON: Bruce Ellertson.
MR. GAUSTAD: Bruce Ellertson?
MR. ELLERTSON: Right.
MR. GAUSTAD: Okay. Thank you.
All right. With that, we'll conclude the hearing. Thank you for all coming.
Oh, I've got to make a couple of announcements first, before everybody leaves,

by regulation.
First, if the Board denies the permit, that'll be, that constitutes a final denial.
Appeals must be taken to the District Court within 30 days.
Second, a Board-approved Application will be forwarded to the State Engineer.
Third, those who wish to be notified of the Board's decision must provide their names and addresses in writing to the Board at the end of the meeting.
Fourth, the Board must send Notice and a copy of the Board's determination and rationale to all parties of record, anyone who is requested in writing to be notified and the State Engineer.
Has everybody signed the sign-in sheet?
Somebody have that?
MS. VARNSON: It's right (indicating) here.
MR. GAUSTAD: So I can get that back?

Oh, you've got it.
We'll mark that as --
This'll be Exhibit 11 for today's hearing.
With that, if those that, with respect to the announcement that want to get, be notified, if you want to come up and we'll have a, another sign-in sheet here (indicating), a yellow pad of paper, just write your name and address and -- so I can send the, the determination to you.
Thank you very much for attending, have a great day.
(Whereupon, the proceedings were concluded at 11:25 o'clock a.m.)

REPORTER'S CERTIFICATE

I, Joy Filipski, a general shorthand (Stenograph) reporter, 2100 South Columbia Road, Suite 204, Grand Forks, North Dakota, do hereby certify that the foregoing 54 pages of typewritten material constitutes a full, true and correct transcript of my original Stenograph notes, as they purport to contain, of the transcript of the proceedings reported by me at the time and place hereinbefore mentioned.

Joy Filipski

Dated this 21st day of November, 2019.

S

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DWR Exhibit 3

NORTH Dakota | State Engineer
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September 6, 2019

Mr. Ben Varnson, Chairman
Nelson County Water Resource District
P.O. Box 446
Lakota, ND 58344

RE: Surface Drain Permit Application No. 5254

Dear Mr. Varnson:

The Office of the State Engineer (OSE) has reviewed Application for Surface Drain No. 5254 (Application), submitted by Nelson County Commission for a proposed surface drain, locally known as County Road 22 Drain (Project). The Project is to be located in the W ½ of Section 16, N ½ of Section 20, and the NE ¼ of Section 19, Township 152 North, Range 59 West, Williams Township, Nelson County.

Upon review, the OSE has determined that the **proposed drainage under this Application is drainage of statewide or interdistrict significance** (see technical memorandum enclosed). Therefore, the OSE is forwarding the Application to the Nelson County Water Resource District (District) to process according to North Dakota Administrative Code (N.D.A.C.) § 89-02-01-09.1.

As required under N.D.A.C. § 89-02-01-09.1(1)(f), the District must evaluate the application based upon the factors in N.D.A.C. § 89-02-01-09 (enclosed). If the District approves the Application, the OSE will evaluate the Application based upon these same factors.

In the event the Application is approved by the District, the OSE has determined more information will be necessary for the OSE to properly evaluate the Application under N.D.A.C. § 89-02-01-09.4. Specifically, the Applicant will need to provide the OSE a scientific analysis as evidence to determine how much sediment has been deposited along and within the natural outlet of the slough complex that is impacting County Road 22. If a technical report is prepared and provided, such as one prepared by a soil scientist, the OSE will be able to adequately review and compare the Project with the natural outlet's maintained condition.

The OSE will not issue a permit if the District's or OSE's evaluation of the Application and Project yields:

- Additional watershed area contributing to Devils or Stump Lakes
- Additional water being drained below the natural outlet of the slough complex

Please contact Brian Mager at 701-328-3442 or bmager@nd.gov if you have any questions concerning this correspondence.

Sincerely,

Garland Erbele, P.E.
State Engineer

GE:BRM:pdh/2112
Enclosures
cc: NRCS State Office (Electronic)
NRCS – Cavalier (Electronic)
USACE Regulatory Office (Electronic)
Nelson County Commission
Nelson County Highway Department

NORTH Dakota | State Engineer
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TECHNICAL MEMORANDUM

DATE: **September 3, 2019**

TO: Garland Erbele, P.E., State Engineer

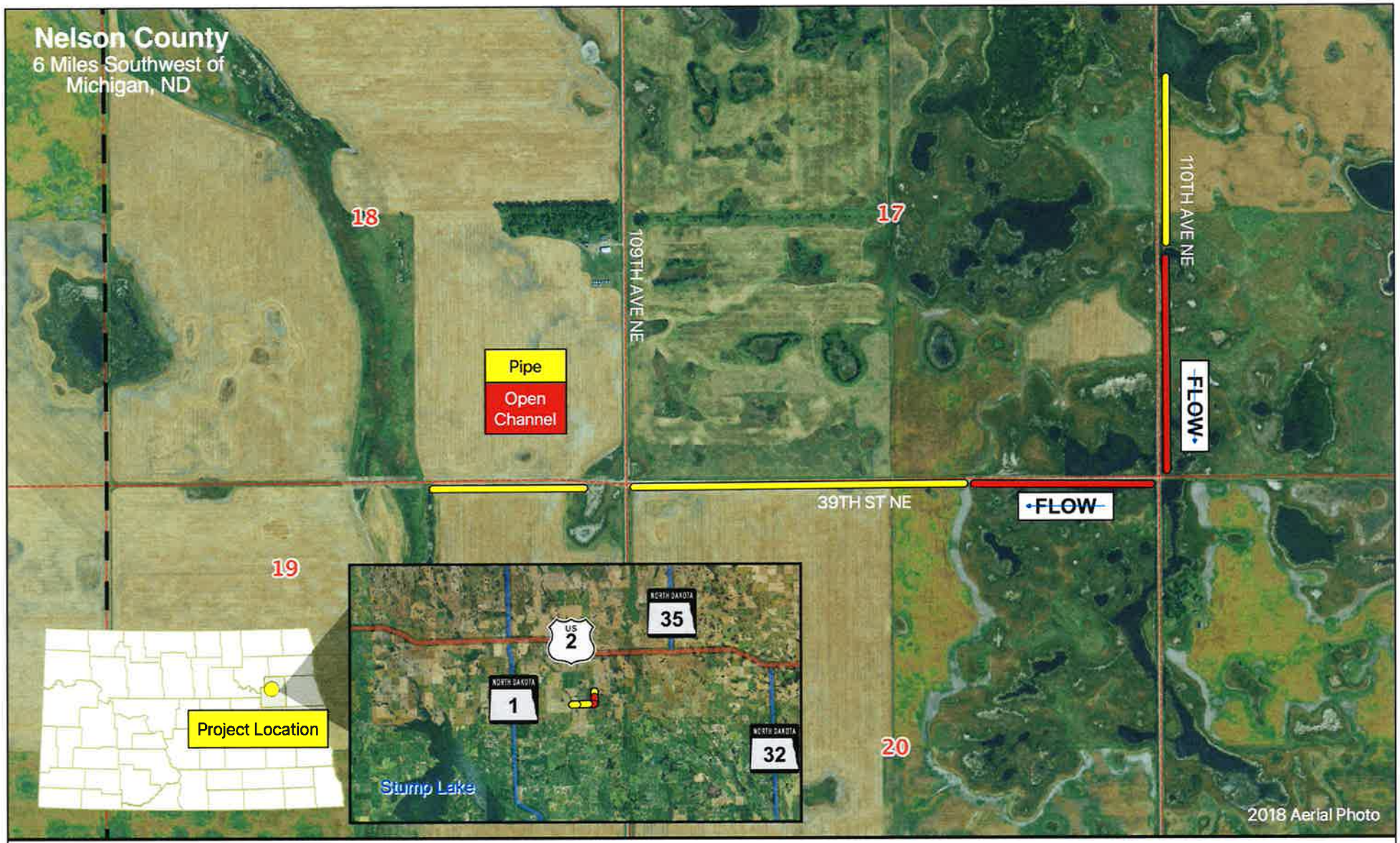
FROM: John Paczkowski, P.E., Assistant State Engineer
Aaron Carranza, P.E., Director, Regulatory Division
Matt Lindsay, P.E., Manager, Engineering and Permitting Section
Brian Mager, P.E., Water Resource Engineer

SUBJECT: **Application for Surface Drain No. 5254 – Nelson County Highway 22 Drain**

On December 10, 2018, the Office of the State Engineer (OSE) received Application for Surface Drain No. 5254 (Application), from the Nelson County Commission (Applicant), a proposed surface drain. The drain is locally known as the Nelson County Highway 22 Drain Project (Project) and is located in W ½ of Section 16, NE ¼ of Section 19, and N ½ of Section 20, Township 152 North, Range 59 West, Williams Township, Nelson County.

According to the Application, the purpose of the proposed drainage is to provide flood relief and structural integrity for County Highway 22. The proposed Project is designed to provide an alternate outlet alignment for a slough complex that is impacting Highway 22. The Applicant claims that the natural outlet to this slough complex has silted in beyond its natural outlet. The realigned alternate outlet would drain by gravity through a combination of open channel and buried pipe. The proposed length of the entire Drain is 11,000 linear feet with a 6,000-foot portion of the total length being constructed of 18-inch double walled pipe. Open channel cuts are designed to have a 0% grade, 3-foot bottom width, and 4:1 side slopes. To remain within the road right-of-way, deep cuts through existing grade will incorporate the 18-inch buried pipe at a grade of 0.05 percent slope (see map for alignment and material callouts). The Project outlets into a tributary of Stump Lake located in the NE ¼ of Section 19, Williams Township.

According to North Dakota Century Code (N.D.C.C.) § 61-32-03, a permit to drain is required "before draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising of eighty acres or more." Based on the Application materials submitted, the OSE has determined that the proposed Application will drain a watershed area of 80 acres or more. Therefore, a surface drain permit is required for the proposed Application. The OSE staff determined that the Application was located in the Stump Lake Watershed, a watershed within the Devils Lake Basin. According to a July 25, 1995 letter from the State Engineer, "all drainage applications received for projects within the Devils Lake Basin will be, until further notice, of statewide significance." Therefore, **I recommend the State Engineer determine the Application to be of Statewide Significance.**



Drain Permit Application No. 5254
Nelson County Commission

W 1/2 Section 16, NE 1/4 Section 19, N 1/2 Section 20,
T152N, R59W, Nelson County

Drain

N
W E
S

Date: 3/7/2019
Prepared by: CWN

NORTH Dakota | Environmental Quality

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November 13, 2019

Ben Varnson Chairman
Nelson County Water Resource District
104 East B Avenue
Lakota, ND 58344-0046

RE: Statewide or Interdistrict Significance Drain Application #5254 [County Road 22 Drain]

Dear Chairman Varnson:

The North Dakota Department of Environmental Quality, Division of Water Quality (department) appreciates the opportunity to comment on the proposed County Road 22 Drain. In brief, the drain must not cause an exceedance of the numeric water quality standard or violate the antidegradation policy as outlined in N.D.A.C. § 33.1-16-02.1 (water quality standards).

If you have any questions or need assistance, please contact Peter Wax at 701-328-5268 or pwax@nd.gov.

Sincerely,

Peter N. Wax
Environmental Scientist
Division of Water Quality

PNW:dlp
xc: Bruce Ellertson, Nelson County Commission, Chairman, Lakota, ND
Aaron Carranza, PE, State Water Commission
Bruce Kreft, NDG&F

918 East Divide Avenue | Bismarck ND 58501-1947 | Fax 701-328-5200 | deq.nd.gov

Director's Office 701-328-5150
Division of Air Quality 701-328-5188
Division of Municipal Facilities 701-328-5211
Division of Waste Management 701-328-5166
Division of Water Quality 701-328-5210
Division of Chemistry 701-328-6140 2635 East Main Ave Bismarck ND 58501

NORTH Dakota | Environmental Quality

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EXHIBIT tabbies 7

RECEIVED
NOV 13 2019
PEARSON CHRISTENSEN, PLLP
LAW FIRM

November 7, 2019

Daniel Gaustad
Pearson Christensen, PLLP
24 North 4th Street
PO Box 5758
Grand Forks, ND 58206-5758

Re: Project Code: File: 90534.004, Nelson County Road 22 Project in Nelson County

Dear Mr. Gaustad:

The North Dakota Department of Environmental Quality has reviewed the information concerning the above-referenced project received at the department on October 30, 2019, with respect to possible environmental impacts.

This department believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods. With respect to construction, we have the following comments:

1. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.

2. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. **Guidelines for minimizing degradation to waterways during construction are attached.**

3. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the reestablishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.

4. All solid waste materials must be managed and transported in accordance with the state's solid and hazardous waste rules. Appropriate efforts to reduce, reuse and/or recycle waste materials are strongly encouraged. As appropriate, segregation of inert waste from non-inert waste can generally reduce the cost of waste management. Further information on waste management and recycling is available from the department's Division of Waste Management at (701) 328-5166.

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Director's Office 701-328-5150
Division of Air Quality 701-328-5188
Division of Municipal Facilities 701-328-5211
Division of Waste Management 701-328-5166
Division of Water Quality 701-328-5210
Division of Chemistry 701-328-6140 2635 East Main Ave Bismarck ND 58501

Cty 22 Drain 61

These comments are based on the information provided about the project in the above-referenced submittal. The U.S. Army Corps of Engineers may require a water quality certification from this department for the project if the project is subject to their Section 404 permitting process. Any additional information which may be required by the U.S. Army Corps of Engineers under the process will be considered by this department in our determination regarding the issuance of such a certification.

The department owns no land in or adjacent to the proposed improvements, nor does it have any projects scheduled in the area. In addition, we believe the proposed activities are consistent with the State Implementation Plan for the Control of Air Pollution for the State of North Dakota.

If you have any questions regarding our comments, please feel free to contact this office.

Sincerely,

L. David Glatt, P.E., Director
North Dakota Department of Environmental Quality

LDG:dlp
Attach.

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Construction and Environmental Disturbance Requirements

The following are the minimum requirements of the North Dakota Department of Environmental Quality for projects that involve construction or environmental disturbance in or near waters of the State of North Dakota. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect waters of the state. All projects must be constructed to minimize the loss of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion of soil and sediment loss using erosion and sediment controls. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, and land resources must be protected against compaction, vegetation loss, and unnecessary damage.

Surface Waters

All construction must be managed to minimize impacts to aquatic systems. Follow safe storage and handling procedures to prevent the contamination of water from fuel spills, lubricants, and chemicals. Stream bank and stream bed disturbances must be controlled to minimize slit movement, nutrient upsurges, plant dislocations, and any physical, chemicals, or biological disruption. The use of pesticides or herbicides in or near surface waters is allowed under the department's pesticide application permit with notification to the department.

Fill Material

Any fill material placed below the ordinary high-water mark must be free of topsoil, decomposable materials, and persistent synthetic organic compounds; including, but not limited to, asphalt, tires, treated lumber, and construction debris. The department may require testing of fill materials. All temporary fill must be removed. Debris and solid wastes must be properly disposed or recycled. Impacted areas must be restored to near original condition.

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